

No. 12078

United States
Court of Appeals
for the Ninth Circuit

WALTER TREPTE and MARGARET TREPTE,
Petitioners,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Petition to Review a Decision of The Tax Court
of the United States

DEC - 4 1948

PAUL P. O'BRIEN,
CLERK

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WALTER TREPTE and MARGARET TREPTE,
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner:

GEORGE H. STONE,
MAYNARD J. TOLL,
WILLIAM D. MORRISON.

For Respondent:

JOHN H. PIGG.

Docket No. 12515

WALTER TREPTE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 12516

MARGARET TREPTE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1946

Nov. 18—Petition received and filed. Taxpayer notified. Fee paid.

Nov. 18—Copy of petition served on General Counsel.

1946

Nov. 18—Request for Circuit hearing in Los Angeles, Calif., filed by taxpayer.

Dec. 31—Answer filed by General Counsel.

1947

Jan. 3—Copy of answer served on taxpayer, Los Angeles, California.

Jan. 22—Copy of answer served on taxpayer, Los Angeles, California. (Revised notice as to address).

Sep. 30—Hearing set Dec. 1, 1947, Los Angeles, California.

Dec. 1-2—Hearing had before Judge Disney on merits. Motion of counsel to consolidate granted. Stipulation as to the facts and appearance of William D. Morrison as counsel filed. Motion to consolidate filed and copies served. Briefs due 1/20/48. Replies due 2/20/48.

Dec. 19—Transcript of hearing 12/1/47 filed.

Dec. 19—Transcript of hearing 12/2/47 filed.

1948

Jan. 16—Motion for extension to 2/23/48 to file brief filed by taxpayer. 1/16/48 Granted both parties to 2/10/48.

Jan. 20—Brief filed by General Counsel.

Feb. 9—Brief filed by taxpayer.

Mar. 9—Reply brief filed by General Counsel.

Mar. 10—Reply brief filed by taxpayer. Copy served.

May 28—Memorandum findings of fact and opinion rendered, Judge Disney. Decision will be

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entered for the respondent. 5/28/48 Copy served.

May 28—Decision entered, Judge Disney, Div. 14.

June 25—Motion to vacate decision and for rehearing and reconsideration or revision of decision filed by taxpayer.

June 28—Motion filed June 25, 1948, denied.

Aug. 23—Petition for review by U. S. Court of Appeals for the Ninth Circuit with assignments of error filed by taxpayer.

Aug. 23—Proof of service filed. [1*]

1948

Oct. 4—Copy of joint motion, affidavit in support of motion and certified copy of order from the U. S. Court of Appeals for the Ninth Circuit re consolidation of Dockets 12515 and 12516 and transmission of petitioner's original exhibits 1 and 4 thru 16 and 21; respondent's original exhibits G thru L and joint original exhibits 2-A, 3-A, 17-C, 18-D, 19-E and 20-F fifteen days prior to the hearing and extension to Nov. 16, 1948, to file record on review filed.

Oct. 11—Designation of record filed by taxpayer with acknowledgment of service thereon.

* Page numbering appearing at foot of page of original certified Transcript of Record.

The Tax Court of the United States

Docket No. 12515

WALTER TREPTE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, Los Angeles Division, LA:IT:90D:LHP, dated August 23, 1946, and as basis of his proceedings alleges as follows:

1. The petitioner, Walter Treppe, is an individual with principal office at 2001 Kettner Boulevard, San Diego 1, California. The returns for the period herein involved were filed with the Collector for the Sixth District of California.

2. The notice of deficiency (a copy of which, together with statement accompanying same, is attached hereto, marked Exhibit "A" and made a part hereof), [5] was mailed to the petitioner on August 23, 1946.

3. The taxes in controversy are individual income and victory taxes for the calendar years 1942, and 1943, and in the amount of \$23,183.84.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The Commissioner erroneously held:

1. The Trepte Construction Company co-partnership to be ineffective as a partnership for income tax purposes;

2. The assignment duly made by the petitioner of all of his assets, property, business, and income in and to the Golden & Trepte Construction Company, to the Trepte Construction Company to be ineffective;

3. The Partnership Returns of Income for the calendar years 1942, and 1943, of the Trepte Construction Company to be ineffective;

4. The income of the Trepte Construction Company and the Golden & Trepte Construction Company to be the community property income of the petitioner and the petitioner's wife, Margaret Trepte; and

5. The petitioner's two sons, Walter B. Trepte, and Albert Eugene Trepte, did not participate [6] for income tax purposes in the income of the Trepte Construction Company.

(b) In determining the taxable net income of the petitioner for the calendar years 1942, and 1943, the Commissioner erroneously included as income subject to tax the following items:

(1) Taxable Year Ended December 31, 1942

ADDITIONAL INCOME:

(a) Business income	\$ 14,653.68
(b) Partnership income increased	12,484.31
<hr/>	
Total additional income.....	\$ 27,137.99

EXPLANATION OF ITEMS
(As shown in Statement Exhibit "A")

"(a) The net business income of the Trepte Construction Company has been determined in the amount of \$29,307.36, computed as follows, your community half of which, or \$14,653.68, is added to your income for the reason previously given:

Net income as reported by Trepte Construction Company	\$176,415.67
Less: Income of Golden & Trepte Construction Co. included therein	146,613.31
Operating income	\$ 29,802.36
Less: Salary paid to Walter B. Trepte.....	495.00
Business income adjusted.....	\$ 29,307.36
Your community half of business income.....	14,653.68

(b) In your return you reported partnership income in the amount of \$60,822.35. As the result of the foregoing adjustment, your partnership income has been determined in the amount of \$73,306.66. The increase, or \$12,484.31, is accordingly added [7] to your income.

Your distributive share of the ordinary net income of Golden & Trepte Construction Company.....	\$146,613.31
Your community share (1/2 of \$146,613.31).....	73,306.66
Partnership income reported	60,822.35
Partnership income increased	\$ 12,484.31";

(2) Taxable Year Ended December 31, 1943

ADDITIONAL INCOME:	Income Tax Net Income	Victory Tax Net Income
(a) Net gain from the sale of capital assets increased.....	\$ 190.96	\$ 0.00
(b) Business income	8,126.57	8,126.57
(c) Partnership income increased	5,155.51	5,155.51
Total additional income.....	\$ 13,473.04	\$ 13,282.08

EXPLANATION OF ITEMS

(As shown in Statement Exhibit "A")

“(a) Net gain from the sale of capital assets, reported in your return in the amount of \$1,048.70, is increased by \$190.96 as shown in the following computation:

Net long-term capital gain realized from the sale of equipment by the Trepte Construction Co.....	\$1,550.01
Your community half of the above gain.....	775.01
Net long-term gain from the sale of stock, as shown in your return	150.00
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Total net long-term capital gain.....	\$ 925.01
Net short-term capital gain from the sale of land, as shown in your return	314.65
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Net gain from the sale of capital assets, adjusted.....	\$1,239.66
Amount reported in your return.....	1,048.70
<hr/>	
Net gain from the sale of capital assets, increased.....	\$ 190.96

The increase, or \$190.96, is accordingly added to your income.

(b) The net business income of the Trepte Construction Company has been determined in the amount of \$16,253.14, computed as follows, your community half of which, or \$8,126.57, is added to your income for the reason previously given:

Net income as reported by Trepte Construction Co.....	\$118,030.00
Less: Income of Golden & Trepte Construction Co. included therein	\$ 99,246.86
<hr/>	
Operating profit	\$ 18,783.14
Less: Salary paid to Walter B. Trepte.....	2,530.00
<hr/>	
Business income adjusted	\$ 16,253.14
Your community half of business income.....	\$ 8,126.57

(c) In your return you reported partnership income in the amount of \$44,467.92. As the result of the foregoing adjustment, your partnership income has been determined in the amount of

\$49,623.43. The increase, or \$5,155.51, is accordingly added to your income.

Your distributive share of the ordinary net income of

Golden & Trepte Construction Company.....	\$99,246.86
Your community share (1/2 of \$99,246.86).....	49,623.43
Partnership income reported	44,467.92

Partnership income increased	\$ 5,155.51''
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(c) The Commissioner erroneously determined a deficiency of income and victory tax of the petitioner [9] for the year 1943 of \$23,183.84, based on a total additional income for the taxable year ended December 31, 1942, of \$27,137.99; a total additional net income for income tax purposes of \$13,473.03, and a total additional net income for victory tax purposes of \$13,282.08, for the taxable year ended December 31, 1943; as set out in paragraphs (1) and (2) above, and also shown in statement attached hereto, marked Exhibit "A", and made a part hereof.

(d) The Commissioner erroneously included as community property taxable income of the petitioner and his wife, Margaret Trepte, the income of the Trepte Construction Company, a partnership, exclusive of the income derived from the Golden & Trepte Construction Company, which income has been properly returned as income in the Partnership Return of Income of the Trepte Construction Company for the calendar years 1942, and 1943, and by the erroneous inclusion of this income by the Commissioner, it increased the taxable income of the petitioner the sum of \$14,653.68, for the calendar year 1942, and \$8,126.57, for income and victory tax purposes for the calendar year 1943.

(e) The Commissioner erroneously included as community property taxable income of the petitioner and his wife, Margaret Trepte, the income derived from [10] the Golden & Trepte Construction Company, a partnership, composed of Walter Trepte, petitioner herein, and M. H. Golden, whereas the assets, property, business, and income of the said co-partnership owned by the petitioner had been duly assigned by the petitioner to the Trepte Construction Company, a partnership, and the income therefrom had been properly returned as income in the Partnership Return of Income of the Trepte Construction Company for the respective calendar years 1942, and 1943, and by the erroneous inclusion of the said income by the Commissioner, the taxable income of the petitioner was increased by the sum of \$12,484.31, for the calendar year 1942, and \$5,155.51, for income and victory tax for the calendar year 1943.

(f) In determining the tax set forth in the notice of deficiency, addressed to the petitioner, the Commissioner erred in disregarding the Articles of Co-Partnership, which were made and entered into as of the first day of January, 1942, by and between Walter Trepte (the petitioner herein), Margaret Trepte (the wife of the petitioner), and their two sons, Walter B. Trepte and Albert Eugene Trepte, and computing the income subject to tax of Trepte Construction Company as though it were community property taxable [11] income of the petitioner, and his wife, Margaret Trepte. A copy of said Articles of Co-Partnership is attached hereto, marked Exhibit "B", and made a part hereof.

(g) In determining the tax as set out in the notice of deficiency addressed to the petitioner the Commissioner through error failed to give consideration or recognition to Forms 1065, Treasury Department, United States Partnership Return of Income for the calendar years 1942, and 1943, heretofore filed by the Trepte Construction Company, a partnership, and by so doing erroneously computed the income subject to tax as though it were community property taxable income of the petitioner, and his wife, Margaret Trepte. A copy of each of said Forms 1065, United States Return of Income for the years 1942, and 1943, heretofore filed by the Trepte Construction Company, is attached hereto, marked Exhibit "C" and "D" respectively, and made a part hereof.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) Articles of Co-Partnership were made and entered into as of the first day of January, 1942, by and between Walter Trepte, (the petitioner herein), [12] Margaret Trepte (the wife of the petitioner), and their two sons, Walter B. Trepte, and Albert Eugene Trepte, to conduct and do business as the "Trepte Construction Company," and the business operations were conducted and carried on at all times herein mentioned according to the valid and binding Articles of Co-Partnership, which agreement fixes and determines the interests each of the co-partners shall have in the assets of the Trepte Construction Company, and the share each of the said co-partners shall have in the net income or losses as may result from the operations of the business for each calendar year.

A copy of the said Articles of Co-Partnership is attached hereto, marked Exhibit "B", and made a part hereof.

(b) That at the time of the formation of the co-partnership (Trepte Construction Company) namely, as of January 1, 1942, Walter Trepte, the petitioner herein, assigned to the said co-partnership all of the assets, property, and business, subject to all liabilities, which he used to conduct and carry on the business and operations as the Trepte Construction Company, and the petitioner, Walter Trepte, also duly assigned to the said co-partnership all of his interest in and to the assets, property, business, and income, [13] which was one-half interest, in the Golden & Trepte Construction Company, also assigned all joint construction ventures and all profits and losses from said ventures, as well as all outside earnings by reason of his personal efforts.

(c) Walter B. Trepte, and Albert Eugene Trepte, sons of the petitioner, purchased their respective interest in and to the said co-partnership at its full book value, assumed its liabilities, and have received their share of the income of said co-partnership by distribution thereof to the respective co-partners according to the terms of the said Articles of Co-Partnership, which share of the net income and losses to each is:

Walter Trepte	26%
Margaret Trepte	26%
Walter B. Trepte	24%
Albert Eugene Trepte	24%

The said partners' shares of the income under the

terms of the aforesaid Articles of Co-Partnership were paid over to each of the said co-partners and used by each of the said co-partners as his or her sole and separate property.

(d) Each of the said sons, Walter B. Trepte, [14] and Albert Eugene Trepte, co-partners under the Articles of Co-Partnership, have rendered valuable services to the co-partnership, accepted their full share of the responsibility of the management and control of the Trepte Construction Company, and that during such time as Albert Eugene Trepte was a member of the armed forces of the United States he was considered a member of the said co-partnership and justly entitled to his distributive share in the income, and said share was so paid over to him.

(e) The Commissioner failed to recognize or take into consideration the Articles of Co-Partnership, dated January 1, 1942, marked Exhibit "B", and erroneously included in the deficiency statement, marked Exhibit "A", the following items as taxable income to the petitioner: "Business income \$14,653.68," for the taxable year ended December 31, 1942, and "Business income \$8,126.57," for the taxable year ended December 31, 1943; the "Partnership income increased \$12,484.31," for the taxable year ended December 31, 1942; "Partnership income increased \$5,155.51," for the taxable year ended December 31, 1943, whereas, all of the petitioner's share of the assets, property, business, and income of the Golden & Trepte Construction Company had [15] been duly assigned by the petitioner to, and was received by the Co-Partnership (Trepte Construc-

tion Company); that the above amounts are a part of the income of the Trepte Construction Company, which is taxable to each of the co-partners of the Trepte Construction Company as their respective partners' shares of income as returned in Forms 1065, Treasury Department, United States Partnership Return of Income for the calendar years 1942, and 1943, as heretofore filed by the Trepte Construction Company. A copy of each of said Returns is attached hereto, marked Exhibit "C" and "D" respectively, and made a part hereof, and that the said amounts should not be so segregated or determined to be the community property income of the petitioner.

Wherefore, the petitioner prays this Court may hear the proceeding and determine that there is no deficiency due from the petitioner in the sum of \$23,183.84, or any other sum.

/s/ GEORGE H. STONE,
Counsel for Petitioner.

/s/ MAYNARD J. TOLL,
Counsel for Petitioner. [16]

State of California,
County of San Diego—ss.

Walter Trepte, being duly sworn, says that he is the petitioner above named; that he has read the foregoing petition, and is familiar with the statements contained therein, and that the statements

contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

/s/ WALTER TREPTE.

Subscribed and sworn to before me this 31st day of October, 1946.

(Seal) /s/ GLEN H. MUNKELT,
Notary Public in and for the County of San Diego,
State of California.

[Endorsed]: T.C.U.S. Filed Nov. 18, 1946. [17]

[Title of Tax Court and Cause No. 12515.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits the taxes in controversy are individual income and victory taxes for the calendar years 1942 and 1943; denies the remainder of the allegations contained in paragraph 3 of the petition.

4. (a) to (g), inclusive. Denies the allegations of error contained in subparagraphs (a) to (g), and all subdivisions thereof, of paragraph 4 of the petition.

5. (a) to (e), inclusive. Denies the allegations of fact contained in subparagraphs (a) to (e), inclusive, of paragraph 5 of the petition. [18]

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ J. P. WENCHEL,
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

E. C. CROUTER,
Special Attorney,
Bureau of Internal Revenue.

[Endorsed]: T.C.U.S. Filed Dec. 31, 1946. [19]

The Tax Court of the United States

Docket No. 12516

MARGARET TREPTE,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, Los Angeles Division, LA: IT: 90D: LHP, dated August 23, 1946, and as basis of her proceedings alleges as follows:

1. The petitioner, Margaret Trepte, is an individual with principal office at 2001 Kettner Boulevard, San Diego 1, California. The returns for the period herein involved were filed with the Collector for the Sixth District of California.

2. The notice of deficiency (a copy of which, together with statement accompanying same, is attached hereto, marked exhibit "A" and made a part hereof) [20] was mailed to the petitioner on August 23, 1946.

3. The taxes in controversy are individual income and victory taxes for the calendar years 1942, and 1943, and in the amount of \$29,480.82.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The Commissioner erroneously held:

1. The Trepte Construction Company Copartnership to be ineffective as a partnership for income tax purposes:

2. The assignment duly made by the petitioner of all of his assets, property, business, and income in and to the Golden & Trepte Construction Company, to the Trepte Construction Company to be ineffective;

3. The Partnership Returns of Income for the calendar years 1942, and 1943, of the Trepte Construction Company to be ineffective;

4. The income of the Trepte Construction Company and the Golden & Trepte Construction Company to be the community property income of the petitioner and the petitioner's husband, Walter Trepte; and

5. The petitioner's two sons, Walter B. Trepte, and Albert Eugene Trepte, did not participate [21] for income tax purposes in the income of the Trepte Construction Company.

(b) In determining the taxable net income of the petitioner for the calendar years 1942, and 1943, the Commissioner erroneously included as income subject to tax the following items:

(1) Taxable Year Ended December 31, 1942

ADDITIONAL INCOME:

(a) Business income	\$ 14,653.68
(b) Partnership income increased	16,252.19

Total additional income.....\$ 30,905.87

EXPLANATION OF ITEMS
(As shown in statement Exhibit "A")

"(a) The net business income of the Trepte Construction Company has been determined in the amount of \$29,307.36, computed as follows, your community half of which, or \$14,653.68, is added to your income for the reason previously given:

Net income as reported by Trepte Construction Co.....\$176,415.67
Less: Income of Golden & Trepte Construction Co.

 included therein 146,613.31

Operating income\$ 29,802.36

Less: Salary paid to Walter B. Trepte..... 495.00

Business income adjusted\$ 29,307.36

Your community half of business income.....\$ 14,653.68

(b) In your return you reported partnership income in the amount of \$57,054.46. As the result of the foregoing adjustment, your partnership income has been determined in the amount of \$73,306.65. The increase, or \$16,252.19, is accordingly added [22] to your income.

Your husband's distributive share of the ordinary

 net income of Golden & Trepte Construction Co...\$146,613.31

Your community share (1/2 of \$146,613.31)..... 73,306.65

Partnership income reported 57,054.46

Partnership income increased\$ 16,252.19";

(2) Taxable Year Ended December 31, 1943

ADDITIONAL INCOME:	Income Tax Net Income	Victory Tax Net Income
(a) Net gain from the sale of capital assets increased	\$ 447.02	\$
(b) Business income	8,126.57	8,126.57
(c) Partnership income increased..	24,643.39	24,643.39
Total additional income	\$ 33,216.98	\$ 32,769.96

EXPLANATION OF ITEMS
(As shown in statement Exhibit "A")

"(a) Net gain from the sale of capital assets, reported in your return in the amount of \$792.63 is increased by \$447.02 as shown in the following computation:

Net long-term capital gain realized from the sale of equipment by the Trepte Construction Co.....	\$1,550.01
Your community half of the above gain.....	775.00
Net long-term gain from the sale of stock, as shown in your return	150.00

Total net long-term capital gain.....	\$ 925.00
Net short-term capital gain from the sale of land, as shown in your return	314.65

Net gain from the sale of capital assets, adjusted.....	\$1,239.65
Amount reported in your return.....	792.63

Net gain from the sale of capital assets, increased.....	\$ 447.02
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The increase, or \$447.02, is accordingly added to your income.

(b) The net business income of the Trepte Construction Company has been determined in the amount of \$16,253.14, computed as follows, your community half of which, or \$8,126.57, is added to your income for the reason previously given:

Net income as reported by Trepte Cnostruction Co.....	\$118,030.00
Less: Income of Golden & Trepte Construction Co. included therein	99,246.86

Operating profit	\$ 18,783.14
Less: Salary paid to Walter B. Trepte.....	2,530.00

Business income adjusted	\$ 16,253.14
Your community half of business income.....	\$ 8,126.57

(c) In your return you reported partnership income in the amount of \$24,980.04. As the result of the foregoing adjustment, your partnership income has been determined in the amount of \$49,623.43. The increase, or \$24,643.39, is accordingly added to your income.

Your husband's distributive share of the ordinary net income of Golden & Trepte Construction Co.....	\$99,246.86
Your community share (1/2 of \$99,246.86)	49,623.43
Partnership income reported	24,980.04

Partnership income increased	\$24,643.39''
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(c) The Commissioner erroneously determined a deficiency of income and victory tax of the petitioner [24] for the year 1943 of \$29,480.82; based on a total additional income for the taxable year ended December 31, 1942, of \$30,905.87; a total additional net income for income tax purposes of \$33,216.98; and a total additional net income for victory tax purposes of \$32,769.96 for the taxable year ended December 31, 1943, as set out in paragraph (1) and (2) above, and also shown in statement attached hereto, marked exhibit "A", and made a part hereof.

(d) The Commissioner erroneously included as community property taxable income of the petitioner and her husband, Walter Trepte, the income of the Trepte Construction Company, a partnership, exclusive of the income derived from the Golden & Trepte Construction Company, which income had been properly returned as income in the Partnership Return of Income of the Trepte Construction Company for the calendar years 1942, and 1943, and by the erroneous inclusion of this income by the Commissioner, it increased the taxable income of the petitioner the sum of \$14,653.68 for the calendar year 1942, and \$8,126.57 for income and victory tax purposes for the calendar year 1943.

(e) The Commissioner erroneously included as community property taxable income of the petitioner and her husband, Walter Trepte, the income derived from [25] the Golden & Trepte Construction Company, a partnership, composed of Walter

Trepte, and M. H. Golden, whereas the assets, property, business, and income of the said co-partnership had been duly assigned to the Trepte Construction Company, a partnership, and the income therefrom had been properly returned as income in the Partnership Return of Income of the Trepte Construction Company for the respective calendar years 1942, and 1943, and by the erroneous inclusion of the said income by the Commissioner, the taxable income of the petitioner was increased by the sum of \$16,252.19, for the calendar year 1942, and \$24,643.39, for income and victory tax for the calendar year 1943.

(f) In determining the tax set forth in the notice of deficiency, addressed to the petitioner, the Commissioner erred in disregarding the Articles of Co-Partnership, which were made and entered into as of the first day of January, 1942, by and between Margaret Trepte (the petitioner herein), Walter Trepte (the husband of the petitioner), and their two sons, Walter B. Trepte and Albert Eugene Trepte, and computing the income subject to tax of Trepte Construction Company as though it were community property taxable [26] income of the petitioner, and her husband, Walter Trepte. A copy of said Articles of Co-Partnership is attached hereto, marked exhibit "B", and made a part hereof.

(g) In determining the tax as set out in the notice of deficiency addressed to the petitioner the Commissioner through error failed to give consideration or recognition to Forms 1065, Treasury

Department, United States Partnership Return of Income for the calendar years 1942, and 1943, heretofore filed by the Trepte Construction Company, a partnership, and by so doing erroneously computed the income subject to tax as though it were community property taxable income of the petitioner, and her husband, Walter Trepte. A copy of each of said Forms 1065, United States Return of Income for the years 1942, and 1943, heretofore filed by the Trepte Construction Company, is attached hereto, marked exhibit "C" and "D" respectively, and made a part hereof.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) Articles of Co-Partnership were made and entered into as of the first day of January, 1942, by and between Margaret Trepte (the petitioner herein), [27] Walter Trepte (the husband of the petitioner), and their two sons, Walter B. Trepte, and Albert Eugene Trepte, to conduct and do business as the "Trepte Construction Company," and the business operations were conducted and carried on at all times herein mentioned according to the valid and binding Articles of Co-Partnership, which agreement fixes and determines the interests each the co-partners shall have in the assets of the Trepte Construction Company and the share each of the said co-partners shall have in the net income or losses as may result from the operations of the business for each calendar year. A copy of the said Articles of Co-Partnership is attached hereto, marked exhibit "B", and made a part hereof.

(b) That at the time of the formation of the co-partnership (Trepte Construction Company) namely, as of January 1, 1942, Walter Trepte, husband of the petitioner herein, assigned to the said co-partnership all of the assets, property, and business, subject to all liabilities, which he used to conduct and carry on the business and operations as the Trepte Construction Company, and the husband of the petitioner, Walter Trepte, also duly assigned to the said co-partnership all of his interests in and to the assets, [28] property, business, and income, which was a one-half interest, in the Golden & Trepte Construction Company, also assigned all joint construction ventures and all profits and losses from said ventures, as well as all outside earnings by reason of his personal efforts.

(c) Walter B. Trepte, and Albert Eugene Trepte, sons of the petitioner, purchased their respective interest in and to the said co-partnership at its full book value, assumed its liabilities, and have received their share of the income of said co-partnership by distribution thereof to the respective co-partners according to the terms of the said Articles of Co-Partnership, which share of the net income and losses to each is:

Walter Trepte	26%
Margaret Trepte	26%
Walter B. Trepte.....	24%
Albert Eugene Trepte.....	24%

The said partners' shares of the income under the terms of the aforesaid Articles of Co-Partnership were paid over to each of the said co-partners

and used by each of the said co-partners as his or her sole and separate property.

(d) Each of the said sons, Walter B. Trepte, [29] and Albert Eugene Trepte, co-partners under the Articles of Co-Partnership, have rendered valuable services to the co-partnership, accepted their full share of the responsibility of the management and control of the Trepte Construction Company, and that during such time as Albert Eugene Trepte was a member of the armed forces of the United States he was considered a member of the said co-partnership and justly entitled to his distributive share in the income, and said share was so paid over to him.

(e) The Commissioner failed to recognize or take into consideration the Articles of Co-Partnership, dated January 1, 1942, marked exhibit "B", and erroneously included in the deficiency statement, marked exhibit "A", the following items as taxable income to the petitioner: "Business income \$14,653.68," for the taxable year ended December 31, 1942, and "Business income \$8,126.57," for the taxable year ended December 31, 1943; the "Partnership income increased \$16,252.19," for the taxable year ended December 31, 1942; "Partnership income increased \$24,643.39," for the taxable year ended December 31, 1943, whereas, all of the petitioner's share of the assets, property, business, and income of the Golden & Trepte Construction Company had [30] been duly assigned to, and was received by the Co-Partnership (Trepte Construction Company); that the above amounts are a part

of the income of the Trepte Construction Company, which is taxable to each of the co-partners of the Trepte Construction Company as their respective partners' shares of income as returned in Forms 1065, Treasury Department, United States Partnership Return of Income for the calendar years 1942, and 1943, as heretofore filed by the Trepte Construction Company. A copy of each of said Returns is attached hereto, marked exhibit "C" and "D" respectively, and made a part hereof, and that the said amounts should not be so segregated or determined to be the community property income of the petitioner.

Wherefore, the petitioner prays this Court may hear the proceeding and determine that there is no deficiency due from the petitioner in the sum of \$29,480.82, or any other sum.

/s/ GEORGE H. STONE,
Counsel for Petitioner,

/s/ MAYNARD J. TOLL,
Counsel for Petitioner. [31]

State of California,
County of San Diego—ss.

Margaret Trepte, being duly sworn, says that she is the petitioner above named; that she has read the foregoing petition, and is familiar with the statements contained therein, and that the statements contained therein are true, except those

stated to be upon information and belief, and that those she believes to be true.

/s/ MARGARET TREPTE.

Subscribed and sworn to before me this 31st day of October, 1946.

(Seal) /s/ GLEN H. MUNKELT,
Notary Public in and for the County of San Diego,
State of California. [32]

[Title of Tax Court and Cause No. 12516.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the taxes in controversy are individual income and victory taxes for the calendar years 1942 and 1943; denies the remainder of the allegations contained in paragraph 3 of the petition.

4. (a) to (g), inclusive. Denies the allegations of error contained in subparagraphs (a) to (g), and all subdivisions thereof, of paragraph 4 of the petition. [33]

5. (a) to (e), inclusive. Denies the allegations of fact contained in subparagraphs (a) to (e), inclusive, of paragraph 5 of the petition.

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ J. P. WENCHEL,
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

E. C. CROUTER,
Special Attorney,
Bureau of Internal Revenue.

[Endorsed]: T.C.U.S. Filed Dec. 31, 1946. [34]

The Tax Court of the United States

Docket Nos. 12515, 12516

Walter Trepte, Petitioner, v. Commissioner of Internal Revenue, Respondent.

Margaret Trepte, Petitioner, v. Commissioner of Internal Revenue, Respondent.

George H. Stone, Esq., and Wm. D. Morrison, C.P.A., for the petitioners.

John H. Pigg, Esq., for the respondent.

MEMORANDUM FINDINGS OF FACT AND
OPINION

Disney, Judge: These proceedings, consolidated for hearing and disposition, involve deficiencies in income and victory tax liabilities for the year 1943, as follows:

Petitioner	Docket No.	Deficiency
Walter Trepte	12515	\$23,183.84
Margaret Trepte	12516	29,480.82

The year 1942 is involved in these proceedings by reason of the "forgiveness" feature provided by section 6 of the current Tax Payment Act of 1943, relating to tax for 1942 and 1943. [35]

The issues to be determined are: (1) Did the respondent err in his determination that the business carried on under the name of the Trepte Construction Company during the taxable years was not a bona fide partnership, for income tax purposes, composed of petitioners, Walter Trepte, Margaret Trepte and their two sons and that the

income was community income of Walter Trepte and his wife? (2) Did the respondent err in his determination that the alleged assignment by petitioner, Walter Trepte, to the alleged partnership of Trepte Construction Company, of his interest in the joint venture, known as Golden & Trepte Construction Company is ineffective for income tax purposes?

These cases were submitted on a stipulation of facts and oral testimony. The facts as stipulated are so found. Such parts thereof as it is considered necessary to set forth are included with other facts found from evidence adduced in our

FINDINGS OF FACT

Walter Trepte (hereinafter and sometimes referred to as petitioner) and Margaret Trepte are husband and wife and have resided in San Diego, California, since some time prior to their marriage in 1916. Neither petitioner nor his wife had any property prior to their marriage. All property held by either of them is community property. Income tax returns for the periods here involved were filed with the collector of internal revenue for the sixth district of California, at Los Angeles.

Petitioner's father started in the construction business at San Diego, California, in 1895. From 1910 to 1912, petitioner studied structural design at California School of Mechanical Arts, San Francisco. From 1912 to 1917 he worked for his father; the last two years of this period was spent on a [36] ranch, owned by his father, in the Imperial Valley. In 1917, petitioner's father and a partner,

one Rambo, were conducting the business. At that time petitioner gave his father a note for Rambo's share of the business, after which petitioner and his father conducted the business as a partnership. The note was paid out of petitioner's share of the earnings.

In 1928, petitioner bought his father's interest in that partnership. The dissolution was effected by a property division and a cash settlement. Thereafter, petitioner operated his general contracting business under the name of "Walter Trepte Builder," as a sole proprietorship until the date of the creation of the alleged partnership of Trepte Construction Co. on January 1, 1942.

The business of petitioner's father was commercial and engineering contracting. Petitioner continued in this same field after he acquired the business in 1928. The work is technical in that it requires a knowledge of and skill in construction engineering, material and labor markets for the purpose of submitting bids. Petitioner's architectural engineer education gave him real assistance in this phase of the business.

Some time prior to July 6, 1940, petitioner and one M. H. Golden associated themselves as joint venturers to operate as "Golden-Trepte Construction Co.," (hereinafter sometimes referred to as Golden-Trepte) for the purpose of engaging in contracting work for the Federal Government. Golden-Trepte obtained a large contract from the Navy Department for various types of construction in and around the naval facilities in the San

Diego area. The contract was signed by petitioner and Golden, individually, on July 6, 1940. The contract was approved by the Navy Department on July 11, 1940. The contract, as it originally existed, contemplated construction [37] work in the amount of approximately \$3,500,000. However, it was extended to cover projects which eventually had a cost of about \$21,000,000. Under the contract, Golden-Trepte was required to obtain all material and supply all labor. The projects contemplated by this contract and extensions were completed in 1944. Work was begun in 1940. This contract was not obtained on bid but was negotiated at the request of the Navy.

While engaged on the various projects under the Navy contract, Golden-Trepte also undertook other contract work for various governmental agencies and private corporations, including one fuel-depot project for the Navy which was not included in the above contract. Construction jobs were undertaken for Rohr Aircraft Company, as agent for Defense Plant Corporation, and San Diego Gas & Electric Company. The fuel-depot job and the Rohr Aircraft job had value of approximately \$1,750,000. In addition to these, the Trepte Construction Co. also did work for some customers, particularly the Ryan Aircraft Co. Petitioner had a crew at Ryan from 1939 until the end of the war.

The Navy contract provided that Golden-Trepte should designate a construction superintendent to have complete charge of all work under the contract. It further provided that no person

shall be assigned as superintendent, Chief Engineer, Chief Purchasing Agent, Chief Assistant, or similar position in the field organization or as principal assistant to such persons, until the contracting officer shall approve the qualifications and experience of the person proposed for such assignment. The Rohr contract provided that the "contractor" (Golden-Trepte) shall keep on the job, at all times, a qualified representative, satisfactory to the other contracting party. [38]

Prior to January 1, 1942, petitioner had between 75 and 100 employees in his individual business. Golden-Trepte had about 1,500 employees at the peak, which was reached in December 1941. The foreman and superintendent and others who had technical skills giving them responsibility comprised approximately 10 to 20 per cent of the employees for both organizations.

In the summer of 1941, the Navy contract was extended to include certain construction on San Clemente Island, about 100 miles off the coast of San Diego. Petitioner flew out to the project about once a week; due to fog, it was very hazardous. On an earlier trip the plane had nearly crashed and at that time he and Golden discussed what would become of the Navy contract in the event of one or both of their deaths, so petitioner told Golden that he "had been considering having his sons go into partnership" with him, and that he thought that "they should get one formed" as soon as they could to carry on the business if anything happened to them.

Petitioner discussed the desirability of a "partnership" with his wife and two sons on several occasions and pointed out to them how he had been a "partner with his father" and showed them the advantage of coming into a "business which already had an established name for honesty and integrity." The latter part of 1941, petitioner consulted an attorney about drawing up a partnership agreement, and a written "partnership agreement," effective January 1, 1942, was executed, naming as partners petitioner, his wife and sons, Walter B. Trepte and Albert Eugene Trepte.

A certificate of doing business under a fictitious name, dated May 11, 1942, was filed with the State of California. On April 18, 1942, petitioner and his wife executed an instrument entitled "Declaration of Emancipation of [39] Minor," which purported to free Albert Eugene Trepte from all control by his parents as of January 1, 1942. On April 22, 1947, after he attained his majority, Albert executed an instrument purporting to ratify and confirm his act in executing the document entitled "Articles of Co-Partnership," dated January 1, 1942.

In the preamble, the Articles of Co-Partnership recite as follows:

That, Whereas, Wlater [sic] Trepte has for some time past been conducting a general contracting business in the City of San Diego, California, and also has been conducting a joint venture with M. H. Golden under the name of Golden & Trepte Construction Company, and

Whereas, said M. H. Golden and Walter Trepte in the fall of 1941 agreed among themselves to each form a separate family partnership as of January 1, 1942 for the ownership, management and operation of their respective contracting business and to include in their respective family partnerships the assets, accrued earnings and future earnings of said Golden & Trepte Construction Company, and

Whereas, said Walter Trepte has conveyed to the parties hereto all of his interest in his contracting business and his interest in the assets, accrued earnings and future earnings of said Golen [sic] & Trepte Construction Company, and the parties hereto desire to hold all of said property as co-partners and to operate said contracting business as a co-partnership.

The "Partnership Agreement" provided that petitioner and his wife each have a 26 per cent interest and each of the boys have a 24 per cent interest; that the "company" shall have an existence of 20 years from January 1, 1942; also, the capital of said partnership shall consist of "office equipment, planing mill equipment, trucks, machinery, cash in the bank, accounts receivable, naval air station job equity, being the equity in the partnership assets of Golden & Trepte Construction Company, and all other personal property now used by Walter Trepte in said business and also the good will of said business subject to all the liabilities of said business as of [40] January 1, 1942, which appear on the books of sad Walter Trepte as of said date, as follows:"

ASSETS

Cash in bank	\$ 29,197.68
Accounts Receivable	48,023.52
Work in Progress	29.06
Naval Air Station job equity*	88,458.88
Miscellaneous building material	1,846.81
Fixed equipment cost.....	\$14,147.12
Depreciation	3,510.14
Net	\$ 10,636.98
Total Assets	\$178,192.93

LIABILITIES

Accounts payable	\$ 15,079.36
Notes payable to banks	35,000.00
Reserve for insurance	612.91
Reserve for social security taxes.....	1,145.23
Reserve for North Island Equipment.....	1,600.54
Rental Adjustment	
Total Liabilities	\$ 53,438.04
Net Worth	\$124,754.89

*This item consisted of petitioner's interest in money owed to Golden-Trepte by the United States Navy, for labor and material furnished under the contract.

Each of the sons executed and delivered to his parents a promissory note in the amount of \$29,-941.17, the "purchase price" of their respective interests in the alleged partnership.

The agreement provided that petitioner should be general manager of the "Partnership." His duties as manager of the "partnership" were substantially the same as his duties as sole owner of the business before January 1, 1942.

Each "partner" was to share in all profits and losses to the extent of the respective interest of each. The agreement further provided as follows:

* * * After the payment of salaries and certain allowances which shall be fixed from time to time by partners holding a majority interest all profits arising from the operation of said partnership shall be added to the capital of said partnership so long as such a majority interest so decides or in the discretion of the holders of a majority interest may be distributed but any distribution to the partners, Walter B. Trepte and Albert Eugene Trepte, will first be applied upon the payment of any outstanding balance of their notes before distribution be made to them individually.

The agreement provided that deposits to the partnership bank account could be made for the "partnership" by any "partner" or agent of the "partnership." Checks could be drawn on any partnership account by such of the "partners" and their agents as were chosen from time to time by holders of a majority interest.

The agreement further provided:

No partner shall during the continuance of the partnership carry on any business in competition with, or be concerned or interested directly or indirectly in the same kind of business as that carried on by the partnership in the County of San Diego, State of California, without the consent in writing of the other parties hereto, except consent is hereby given to Walter Trepte to carry on the business of Golden & Trepte Construction Company and other partnerships, joint ventures or corporations.

Since the time and efforts of partner Walter

Trepte belong to said family co-partnership, and since the investment in the joint venture of Golden & Trepte Construction Company also belongs to the Trepte Construction Company, such of his time as may be spent on the joint ventures of Golden & Trepte Construction Company shall be considered partnership property and the resulting earnings of the Golden and Trepte joint venture shall be partnership earnings.

That any and all earnings from personal services outside of this family co-partnership shall be given due consideration in allocating partnership profits and losses.

Walter B. Trepte, the son of petitioners herein, and one of the alleged partners, was born in San Diego, California, on November 6, 1918, and was 23 years of age on January 1, 1942. He went through high school, and had [42] one-half year of college work at California State College. Prior to January 1, 1942, the alleged date of the partnership, Walter was employed at various times on his father's construction business. He so worked in the summer of 1935 and 1936, the fall of 1938, the entire years of 1939, and from July of 1940. In 1935 and 1936, he worked as a truck driver. In 1938, he did clerical work as assistant to the bookkeeper and timekeeper. For the remainder of 1940, he was employed by Golden-Trepte in the timekeeping office at the naval facility at North Island. He remained in this position until June 1941, when he went to the job at the Naval fuel depot, for Golden-Trepte. At the fuel depot he

was in charge of personnel and timekeeping, did some bookkeeping and certain security work. He hired and fired employees on the authority of Trepte or Golden. Certain employees, those on an hourly or day-to-day basis, he hired or fired as the need for their services rose or fell. From 1935 through 1941, he was carried on the pay rolls as an employee. His compensation ranged from \$15 per week in the beginning to \$35 per week in 1941 when he worked for Golden-Trepte.

After the formation of the "partnership" on January 1, 1942, Walter B. Trepte worked for Golden-Trepte at the fuel depot. In June or July he went to the Golden-Trepte job at Rohr Aircraft Corporation, and in October or November he went back to the Golden-Trepte job at the Naval Air Station, where he remained until the completion of the contract in October or November of 1943. From October or November 1943, until the middle of 1944, he worked for the "partnership" at Rohr Aircraft, and following that he worked about four months at the Naval Air Station for Golden-Trepte. Since that time he has worked on Trepte Construction Company projects. Prior to January 1, 1942, Walter B. Trepte had never assembled the data necessary to prepare [43] a bid for construction work, though he did help petitioner and estimators employed by petitioner to do so. Between January 1, 1942, and December 31, 1943, he assisted in the same manner. The work Walter B. Trepte performed prior to January 1, 1942, was done under petitioner's supervision. Much of the work after

that date up to December 31, 1943, was also under petitioner's supervision. Some of the work performed during this period was approved by the "officer in charge of the Navy." From January 1, 1942, on, he was paid a regular salary of \$55 per week by Trepte Construction Company. He received extra remuneration from Rohr Aircraft job which was put into the "partnership." For the years 1943, 1944, 1945 and 1946, year-end book-keeping entries were made on books of Trepte Construction Company, purporting to adjust Walter B. Trepte's salary to a basis of \$4,800 per year.

A drawing account was set up in the books of the "partnership" for Walter B. Trepte. His salary was charged to it and also certain other personal expenses, payments made on the note held by his parents, and all withdrawals for payments of Federal and State income taxes. He also had a "capital account" in the books to which was credited his purported original 24 per cent interest and a like proportion of the subsequent profits from the "partnership" for each year. He has seen his drawing and capital accounts each year, but his examination was cursory and for his own information. He is not an accountant though he does understand something about the theory of accounting.

Walter B. Trepte was authorized by the majority-interest partners to sign checks on the accounts of the Trepte Construction Company as provided in the alleged partnership agreement and did sign them. He also signed checks on his father's account while the business was under the name of

[44] Walter Trepte, Builder. Other persons also had authority to sign checks for Trepte Construction Company.

All payments made by Walter B. Trepte on his note, held by his parents, and all payments for Federal and State income taxes were made from profits of the business of Trepte Construction Company.

The construction business requires one having knowledge and experience in order to make bids for jobs, and prior to 1942 petitioner was the only one qualified to do this work, though he hired estimators who prepared estimates which were ultimately approved or disapproved by him. After 1942, the same has generally been true, although since 1941 all or most of the construction work performed by Walter Trepte, builder, has been on Government contract. Walter B. Trepte had no inclination toward that technical end of the business.

Albert Eugene Trepte, son of petitioners herein and one of the alleged partners in Trepte Construction Company, was born September 8, 1925. He was 16 years of age on the date of creation of the alleged partnership. He worked for his father in the construction business in the summer of 1941 at the Naval fuel depot as crewman on a small craft and on a pile driver. In the summer of 1942, he worked on the Ryan Aircraft Company job as an assistant carpenter. On the fuel-depot job he received 75 cents per hour and 85 cents per hour on the Ryan job. He went to summer school in 1943. On February 28, 1944, he was drafted into

the United States Navy and was discharged June 7, 1946. During part of 1946, he worked "down there in a capacity of rustling material." In 1947, he worked in the office taking care of bills. In September 1946, he entered on a course of study in architectural engineering at California State Polytechnic College at San Luis Obispo. This is a two-year course. [45]

The note given by Tlbert Eugene Trepte for his alleged interest in the Trepte Construction Company was paid from profits of the business. The "Company" paid for his personal needs, including clothing, recreation, tuition, school, expenses. It also paid his Federal and State individual income taxes. All of these items were charged against a drawing account in his name on the books of Trepte Construction Company.

In 1942, 1943, 1945 and 1946, petitioner drew \$20,000 per year as salary from the alleged partnership. In 1944, due to decreased business, he drew \$10,000.

Petitioner was reasonably familiar with the various revenue bills of 1940, 1941 and 1942. He was reasonably familiar, from previous experience, with the amount of tax he would have to pay on his profits. He had a certified public accountant audit his books and prepare returns before the "partnership" and the same person performed similar work after the date of the creation of the alleged partnership.

The books (Account No. 293) of Trepte Construction Co. show the following as to withdrawals by Walter B. Trepte: [46]

Year	Note and Interest	Collector of Internal Revenue	Franchise Tax Commission	Checks drawn to Walter B. Trepte	Checks drawn for Walter B. Trepte	Total
1942**	\$	\$	\$	\$ 495.00	\$	\$ 495.00
1943***	11,554.74	14,036.58	776.39	2,085.00	10.30	28,463.01
1944	10,802.38	6,682.24	446.88	.....	7.55	17,939.05
1945	10,500.00	1,740.59	104.38	.....	20.00	12,364.97
1946	.....	24,827.76	638.46	100.00	591.53	26,157.75
1947****	.....	6,727.80	648.21	.....	1,211.11	8,587.12
Total	\$32,857.12	\$54,014.97	\$2,614.32	\$2,680.00	\$1,840.49	\$94,006.90*

* Total discrepancy of \$5,862.37 between stipulation and amount shown in capital account not explained. Discrepancies appear in years 1942-3-4-5-6.

*** First entry other than \$55.00 salary payment—March 19, 1943.

**** Last entry included here—Sept. 26, 1947.

** The date of the first withdrawal recorded on the books was Nov. 2, 1942.

The books of Trepte Construction Co. show the following as to "capital of Walter B. Trepte:"

Date	Descriptive Particulars	Debits	Credits	Balance
Mar. 31, 1943	Transfers of capital from Walter Trepte.....	\$	\$28,941.17	\$28,941.17
Mar. 31, 1943	Profit and Loss 1942.....	.....	29,665.07	58,606.24
Sept. 18, 1943	Adj. error in previous entry recording share purchased from Walter Trepte.....	.....	1,000.00	59,606.24
Feb. 16, 1944	Closing 1943 entries.....	26,877.05	.....	.....
Feb. 16, 1944	Closing 1943 entries.....	.....	23,664.00	56,393.19
Dec. 30, 1944	Walter B. Trepte withdrawals.....	17,843.71	.....	.....
Dec. 30, 1944	Profit and Loss 1944 Distribution.....	.....	8,336.56	46,886.04
Dec. 31, 1945	Walter B. Trepte withdrawals.....	10,472.65	.....	.....
Dec. 31, 1945	Profit and Loss 1945 Distribution.....	.....	25,389.29	61,802.68
Dec. 31, 1946	Walter B. Trepte withdrawals.....	24,364.00	.....	.....
	Profit and Loss 1946 Distribution.....	.....	25,067.35	62,506.03

The books (Account No. 294) of Trepte Construction Co. show the following as to "withdrawals by Albert Eugene Trepte:"

Year	Note and Interest	Collector of Internal Revenue	Franchise Tax Commission	Checks drawn to Albert Eugene Trepte	Checks drawn for Albert Eugene Trepte	Total
1943*	\$11,554.74	\$12,413.21	\$ 987.11	\$750.00	\$ 5.00	\$25,710.06
1944	10,529.78	5,302.29	346.76	.....	676.88	16,855.71**
1945	10,463.27	52.23	55.65	.....	.....	10,571.15
1946	.....	20,110.97	428.77	500.00	186.23	21,225.97
1947***	.....	4,800.55	417.13	750.00	44.80	6,012.48
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
	\$32,547.79	\$42,679.25	\$2,235.42	\$2,000.00	\$ 912.91	\$80,375.37

* First entry recorded on the books—March 27, 1943.

** \$209 unexplained discrepancy between stipulation and amount shown in capital account.

*** Last entry included here—September 3, 1947.

The books of Trepte Construction Co. show the following as to "capital of Albert Eugene Trepte:"

Date	Descriptive Particulars	Debits	Credits	Balance
Mar. 31, 1943	Transfer of capital from Walter Trepte.....	.....	\$28,941.17	\$28,941.17
Mar. 31, 1943	Profit and Loss—1942.....	.....	29,665.07	58,606.24
Sept. 18, 1943	Adj. error in previous entry recording share purchased from Walter Trepte.....	.....	1,000.00	59,606.24
<u>Feb. 16, 1944</u>	Closing 1943 Entries.....	\$25,710.06	.....	.....
Feb. 16, 1944	Closing 1943 Entries.....	.....	23,664.00	57,560.18
Dec. 30, 1944	Albert Eugene Trepte withdrawals.....	16,646.71	.....	.....
Dec. 30, 1944	Profit and Loss 1944 Distribution.....	.....	8,336.56	49,250.03
Dec. 31, 1945	Albert Eugene Trepte withdrawals.....	10,571.15	.....	.....
Dec. 31, 1945	Profit and Loss 1945 Distribution.....	.....	25,389.28	64,068.16
Dec. 31, 1946	Albert Eugene Trepte withdrawals.....	21,225.97	.....	.....
Dec. 31, 1946	Profit and Loss 1946 Distribution.....	.....	25,067.35	67,909.54

Partnership returns of income filed with the collector of internal revenue for the Trepte Construction Co. showed the following in schedule J:

Name	1942	Long	1943	Long
	Ordinary Net Income	Term Gain	Ordinary Net Income	Term Gain
Walter Trepte	\$60,822.35	\$ 686.93	\$44,467.92	\$ 584.05
Margaret Trepte	57,054.46	644.37	24,980.04	327.98
Walter B. Trepte	29,529.06	333.49	25,523.78	335.11
Albert E. Trepte	29,009.80	327.63	23,058.26	302.87
Total.....	\$176,415.67	\$1,992.42	\$118,030.00	\$1,550.01

OPINION

Factually, the first issue in this case follows the now familiar pattern of family partnerships, and is in many respects similar to *Commissioner v. Tower*, 327 U. S. 280, and *Lusthaus v. Commissioner*, 327 U. S. 293. Since this case arises in a community property state (California) and there is no serious contention concerning the wife's interest in the business, our consideration will be directed primarily to the alleged interest of the two sons—Walter B. and Albert Eugene.

Petitioner argues "That vital and valuable services were rendered by each of the sons to the co-partnership; that the two sons participated in the control and management of the business; that each of the sons obtained by purchase his partnership interest in the co-partnership, and went into debt to obtain such interest."

As to capital contribution of an alleged partner, the *Tower* case establishes the rule that whether capital contribution to the business originates with the one making the contribution is a factor to be

considered. The wife in the well-known Lusthaus case signed notes and later had the notes paid off out of the earnings of the business. In that case the Supreme Court of the [49] United States concluded that the wife did not invest capital originating with herself. Petitioners' sons have no stronger case than did the wife in the Lusthaus case. The sons signed notes and the notes were retired by the application of earnings from the business, but there was no investment of new capital in the business, i. e., no new capital that was not already available for use in the business.

The Tower case also established the rule for one to be a partner of a so-called "family partnership" from "services" standpoint, that the alleged partner must substantially contribute to the control and management of the business or otherwise perform vital additional services. We, therefore, consider next whether the sons contributed such services as, under the Tower case and others to the same effect, would justify recognition of them as partners. As to Albert Eugene, it is clear, we think, that there was no such service contribution. At the time the "partnership" was created, he was only sixteen years of age. He worked some in the summer of 1941 for petitioner as a crewman on a small craft and on a pile driver, for which he received a small hourly wage. In the summer of 1942, he worked as an assistant carpenter on the Ryan job for an hourly wage of 85 cents. In 1943, he performed no services and in 1944 he entered the United States Navy. He was discharged in

1946 and soon thereafter enrolled in college. It appears that he did not substantially contribute to the control and management of the business or otherwise perform vital additional services. Walter B. is in a different position in that he was older and was earning a salary of \$35 per week before January 1, 1942, and \$55 per week thereafter, but that fact only serves to refute a contribution of such services by him as would support a partnership. He was paid both before and after formation of the [50] alleged partnership for about the same services. For the years 1943, 1944, 1945 and 1946, year-end bookkeeping entries were made on the books of the "partnership", purporting to adjust his salary to a basis of \$4,800 per year. The services he performed were of a clerical nature, including timekeeping, bookkeeping, some personnel work and the like, for which we think he was adequately paid through the compensation he received in the form of salary. Petitioner stated, at the hearing, that Walter B. was his (petitioner's) assistant but produced no evidence as to the date he became such or what his duties were in that capacity. We think, in general, that services do not greatly affect this case. We find neither son adding "vital additional service" which would take the place of capital contributed because of formation of a partnership.

In addition to the above inquiry as to the presence of these elements deemed by the Tower case essential to partnerships recognizable for Federal tax purposes, other facts, in our opinion, compel a conclusion that there is not here presented such

partnership. Looking at all the facts, we can not say that such a partnership was formed January 1, 1942. Petitioner testified that it was a gradual change into a partnership. In our opinion, the partnership either started January 1, 1942, or not at all. The fact that capital accounts were not set up for the sons until March 31, 1943, indicates no partnership on the alleged date of formation, January 1, 1942. The date first appearing on Albert Eugene Trepte's withdrawal account was March 27, 1943, the first on Walter B. Trepte's withdrawal account was November 30, 1942. Though it is claimed by petitioner that the sons had free access to withdraw their share of the profits from the business, the facts presented give us reason to believe otherwise. According to the books presented in this case, [51] there has been added to Walter B. Trepte's capital account \$112,122.27, indicating his share of the profit of the Trepte Construction Company for the years 1942 to 1946, inclusive. His withdrawals (including September 26, 1947) have been approximately \$94,006.90. Of this amount, \$2,680 was indicated as "checks drawn to Walter B. Trepte" and \$1,840.49 as "checks drawn for Walter B. Trepte." The remainder of the \$94,006.90 was for "Note and interest," "Collector of Internal Revenue" and "Franchise Tax Comm." In like manner there has been added to Albert Eugene Trepte's capital account \$112,122.26 as his share of the profit from the Trepte Construction Company. His withdrawals (including September 3, 1947) have been approximately \$80,375.37, of this

amount, \$2,000 was indicated as "Checks drawn to Albert Eugene Trepte" and \$912.91 as "checks drawn for Albert Eugene Trepte." The remainder of the \$80,375.37 was for "notes and interest," "Collector of Internal Revenue" and "Franchise Tax Comm." There is nothing in the record to indicate that the sons exercised any freedom in regard to withdrawal of their share of the profits. This is not only true of the years 1942 and 1943, but the years following.

Neither does the partnership agreement indicate a true partnership. The agreement provides that the profits and losses are to be divided as follows: 26 per cent to petitioner, 26 per cent to his wife, and 24 per cent to each son. However, the following statement appears in paragraph 11 of the agreement:

That any and all earnings from personal services outside of this family co-partnership shall be given due consideration in allocating partnership profits and losses.

The conflict raises doubt in our minds as to the real intention of the operation of the business in this regard. [52]

The partnership agreement further provides that petitioner should be general manager of the "Partnership." There is no indication that the sons or wife were to take any active part in the operation of the business. Rather, the contrary appears to be true that petitioner would continue to "run" the business as before January 1, 1942.

The lack of reality of a true partnership is further demonstrated in the fact that petitioner's wife, Margaret Trepte, is one of the alleged partners, yet there is no showing whatsoever of contributed capital or services on her part, as required by the Tower case. There is no showing of any business activity on her part in connection with the "Partnership." We consider the lack of facts in this regard important in our consideration of the reality of the "Partnership," i. e., whether the four members of the family really intended to operate as a partnership. We believe they did not.

Petitioner's reliance on such cases as Walter J. Runyon, 8 T. C. 350, and William F. Fischer, 5 T. C. 507, is of no avail since they are clearly distinguishable for the instant proceeding.

As to the partnership question, we therefore, hold for the respondent. In view of our conclusion it becomes unnecessary to consider the second issue.

Decision will be entered for the respondent.

Entered May 28, 1948.

[53]

The Tax Court of the United States

Washington

Docket No. 12515

WALTER TREPTE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, entered May 28, 1948, it is

Ordered and Decided: That there is a deficiency in income and victory tax of \$23,183.84 for the year 1943.

/s/ R. L. DISNEY,

Judge.

Entered May 28, 1948.

[54

The Tax Court of the United States

Washington

Docket No. 12516

MARGARET TREPTE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, entered May 28, 1948, it is

Ordered and Decided: That there is a deficiency in income and victory tax of \$29,480.82 for the year 1943.

/s/ R. L. DISNEY,
Judge.

Entered May 28, 1948.

[55]

In the United States Circuit Court of Appeals
For the Ninth Circuit

T. C. Docket No. 12515

WALTER TREPTE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

T. C. Docket No. 12516

MARGARET TREPTE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION TO REVIEW DECISIONS OF THE
TAX COURT OF THE UNITED STATES

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Walter Trepte and Margaret Trepte, husband and wife, the petitioners in these causes, by George H. Stone and Wm. D. Morrison, counsel, hereby file their petition for a review by the United States Circuit Court of Appeals for the Ninth Circuit of the Memorandum Findings of Fact and Opinion, and Decisions by The Tax Court of the United States entered May 28, 1948, Docket Nos. 12515 and 12516, determining deficiencies in the petition-

ers' United States individual income taxes for the calendar years 1942 and 1943 as follows:

Petitioner	Docket No.	Deficiency
Walter Trepte	12515	\$23,183.84
Margaret Trepte	12516	29,480.82

and respectfully show:

I.

Venue

This petition for review is filed pursuant to provisions [56] of sections 1141 and 1142 of the Internal Revenue Code.

The petitioners, Walter Trepte and Margaret Trepte, each filed his or her Forms 1040, United States Individual Income Tax Returns for the calendar years 1942 and 1943 with the Collector of Internal Revenue of the Sixth District of California, which district includes the County of San Diego, the residence of the petitioners; that subsequent to the decisions of The Tax Court of the United States, rendered May 28, 1948, the petitioners, in lieu of bond or undertaking, and to stop interest from accruing in connection with the deficiencies claimed, paid to the aforesaid Collector the sum of \$52,664.66 taxes, together with interest in the sum of \$13,516.11, making a total of \$66,-180.77.

II.

Nature of the Controversy

On November 18, 1946, each of the petitioners herein filed with The Tax Court of the United

States, pursuant to the provisions of the Internal Revenue Code, his or her petition requesting the redetermination of the deficiency of his or her United States individual income and victory taxes for the calendar years 1942 and 1943 as shown by the official notice of the deficiency mailed by the respondent to each of the aforesaid petitioners under date of August 23, 1946, as follows:

Years 1942 and 1943, Walter Trepte,	
Income and Victory Tax.....	\$23,183.84
Years 1942 and 1943, Margaret Trepte,	
Income and Victory Tax.....	\$29,480.82

The respondent filed his answers December 31, 1946, admitting the jurisdictional facts, but generally denying all of the other allegations of each of the petitions.

The petitions to The Tax Court of the United States of each of the petitioners herein allege that:

(a) Articles of co-partnership were made and entered into as of the first day of January, 1942, by and between Walter Trepte, Margaret Trepte, and their two sons, Walter B. Trepte and Albert Eugene Trepte, to conduct and do business as the "Trepte Construction Co.," and the business operations were conducted and carried on at all times herein mentioned according to the valid and binding Articles of Co-partnership, which agreement fixes and determines the interests each of the co-partners shall have in the assets of the Trepte Construction Co., and the share each of the said co-partners shall have in the net income or losses as

may result from the operations of the business for each calendar year.

(b) That at the time of the formation of the co-partnership (Trepte Construction Co.) namely, as of January 1, 1942, Walter Trepte, the petitioner herein, assigned to the said co-partnership all of the assets, property, and business, subject to all liabilities, which he used to conduct and carry on the business and operations as the Trepte Construction Co., and the petitioner, Walter Trepte, also duly assigned to the said co-partnership all of his interest in and to the assets, property, business and income, which was one-half interest, in the Golden & Trepte Construction Company, also assigned all joint construction ventures and all profits and losses from said ventures, as well as all outside earnings by reason of his personal efforts.

(c) Walter B. Trepte and Albert Eugene Trepte, sons of the petitioners, purchased their respective interest in and to the said co-partnership at its full book value, assumed its liabilities, and have received their share of the income of said co-partnership by distribution thereof [58] to the respective co-partners according to the terms of the said Articles of Co-partnership, which share of the net income and losses to each is:

Walter Trepte	26%
Margaret Trepte	26%
Walter B. Trepte	24%
Albert Eugene Trepte	24%

The said partners' shares of the income under the

terms of the aforesaid Articles of Co-partnership were paid over to each of the said co-partners and used by each of the said co-partners as his or her sole and separate property.

(d) Each of the said sons, Walter B. Trepte and Albert Eugene Trepte, co-partners under the Articles of Co-partnership, have rendered valuable services to the co-partnership, accepted their full share of the responsibility of the management and control of the Trepte Construction Co., and that during such time as Albert Eugene Trepte was a member of the armed forces of the United States he was considered a member of the said co-partnership and justly entitled to his distributive share in the income, and said share was so paid over to him.

(e) The Commissioner failed to recognize or take into consideration the Articles of Co-partnership, dated January 1, 1942, marked Exhibit "B" (Petitioners' Exhibit 1), and erroneously included in the deficiency statement, marked Exhibit "A" ((Petitioners' Exhibits 4 and 5), the following items as taxable income to each of the petitioners herein:

As to petitioner, Walter Trepte:

"Business income \$14,653.68," for the taxable year ended December 31, 1942, and "Business income \$8,126.57," for the taxable year ended December 31, 1943; the "Partnership [59] income increased \$12,484.31," for the taxable year ended December 31, 1942; "Partnership income increased \$5,155.51," for the taxable year ended December 31, 1943;

As to petitioner, Margaret Trepte:

“Business income \$14,653.68,” for the taxable year ended December 31, 1942, and “Business income \$8,126.57,” for the taxable year ended December 31, 1943; the “Partnership income increased \$16,252.19,” for the taxable year ended December 31, 1942; “Partnership income increased \$24,643.39,” for the taxable year ended December 31, 1943;

whereas, all of the petitioner's, Walter Trepte, share of the assets, property, business, and income of the Golden & Trepte Construction Company had been duly assigned by the petitioner, Walter Trepte, to, and was received by, the co-partnership (Trepte Construction Co.); that the above amounts are a part of the income of the Trepte Construction Co., which is taxable to each of the co-partners of the Trepte Construction Co. as their respective partners' shares of income as returned in Forms 1065, Treasury Department, United States Partnership Returns of Income for the calendar years 1942 and 1943, as heretofore filed by the Trepte Construction Co.

The Commissioner of Internal Revenue held the Articles of Co-partnership of January 1, 1942, to be ineffective for income tax purposes and the income reported on the returns of the said partners for the calendar years 1942 and 1943 were adjusted by the Commissioner and held to be the community property of Walter Trepte and his wife, Margaret Trepte; whereas, the income as shown by the part-

nership returns was the income of Walter Trepte, Margaret Trepte, husband and wife, and their two sons, Walter B. Trepte and Albert Eugene [60] Trepte, pursuant to the co-partnership agreement of January 1, 1942.

The Commissioner determined that the income from the Golden & Trepte Construction Company was the community income of Walter Trepte and his wife, Margaret Trepte; whereas, the income from the Golden & Trepte Construction Company was a source of income to the Trepte Construction Company as Walter Trepte had, at the time of the creation of the Articles of Co-partnership, duly assigned to the Trepte Construction Company all of his assets, property, business and earnings in the Golden & Trepte Construction Company, which was one-half interest.

On December 1 and 2, 1947, the causes were heard before Honorable Richard L. Disney, Judge of the Tax Court of the United States, sitting at Los Angeles, California. Petitioners and respondent each filed an opening brief and each filed a reply brief and the causes were submitted for decision. The Tax Court of the United States rendered its Memorandum Findings of Fact and Opinion May 28, 1948, and final Orders and Decisions were duly entered on May 28, 1948, finding deficiencies as set forth above.

III.

Designation of Court of Review

The said petitioners, being aggrieved by the Memorandum Findings of Fact and Opinion, and

Orders and Decisions of the Tax Court of the United States, desire a review thereof, in accordance with the provisions of the Internal Revenue Code, by the United States Circuit Court of Appeals for the Ninth Circuit, within which Circuit is located the office of the Collector of Internal Revenue to whom the said petitioners made their income tax returns for the calendar years 1942 and 1943. [61]

IV.

Assignments of Error

Now comes the petitioners, Walter Trepte and Margaret Trepte, and assign as error in the Memorandum Findings of Facts and Opinion, and Orders and Decisions, the following acts and omissions of the Tax Court of the United States:

(1) The findings of the Tax Court are not supported by the evidence;

(2) The failure to hold that the Articles of Co-partnership of the Trepte Construction Co., dated January 1, 1942, were effective as of said date and constituted a bona fide partnership for tax purposes;

(3) The failure to find that the petitioner, Margaret Trepte, and each of the sons of the said petitioner, Walter B. Trepte and Albert Eugene Trepte, contributed capital to the said co-partnership;

(4) The failure to hold that each of the said sons, Walter B. Trepte and Albert Eugene Trepte, contributed vital services to the co-partnership;

(5) The failure to find that each of the said sons,

Walter B. Trepte and Albert Eugene Trepte, had a share in the management and control of the business;

(6) The failure to determine that there was a definite relation between the profits allocated to each partner and the value of the services rendered;

(7) The failure to find that there was no casting about for a legal means of lessening the tax;

(8) The failure to find that the formation of the present co-partnership by and between the members of the Trepte family constituted a bona fide co-partnership for tax and all other purposes of the third generation of the Trepte family who have constantly carried on the integrity [62] and good will of the construction business under the Trepte name;

(9) The failure to find that Walter B. Trepte and Albert Eugene Trepte each had his share of the profits derived from the partnership; each had control of his share of the profits; and each son had the right to withdraw his share of the profits without being hampered by his parents in any way;

(10) The failure to hold that the partnership did all things necessary and requisite to constitute a partnership as provided for by the laws of the State of California, and by the Internal Revenue Code, more specifically Sections 181, 182, 183, 187 and 3797;

(11) The finding of deficiencies for the years 1942 and 1943 in lieu of a determination that there is no income tax due from the petitioners, Walter Trepte and Margaret Trepte, for either of the years in controversy;

(12) The Tax Court of the United States erred in rendering its decisions for respondent.

Wherefore, petitioners pray that said errors be corrected and the judgment and findings of said Tax Court be reversed.

/s/ WALTER TREPTE,
Petitioner.

/s/ MARGARET TREPTE,
Petitioner.

/s/ GEORGE H. STONE,
Counsel for Petitioner.

/s/ WM. D. MORRISON,
Counsel for Petitioner.

(Affidavits of Verification attached.)

[Endorsed]: T.C.U.S. Filed Aug. 23, 1948. [64]

[Title of U. S. Court of Appeals and Causes.]

NOTICE OF FILING PETITION TO REVIEW
DECISIONS OF THE TAX COURT OF
THE UNITED STATES

To: Commission of Internal Revenue, Internal Revenue Building, Washington, D. C.; Charles Oliphant, Attorney for Respondent, Chief Counsel, Bureau of Internal Revenue, Washington, D. C.

You are hereby notified that the petitioners, Walter Treppe and Margaret Treppe, on the 23rd day of August, 1948, filed with the Clerk of The Tax

Court of the United States, Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decisions of The Tax Court of the United States heretofore rendered in the above-entitled causes. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated at San Diego, California, this 23rd day of August, 1948.

Respectfully,

/s/ GEORGE H. STONE,
Counsel for Petitioner.

/s/ WM. D. MORRISON,
Counsel for Petitioner.

(Acknowledgment of Service.)

[Endorsed]: T.C.U.S. Filed Aug. 23, 1948. [66]

The Tax Court of the United States

Docket Nos. 12515 and 12516

WALTER TREPTE and MARGARET TREPTE,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STIPULATION OF FACTS

It is hereby stipulated by and between the above-entitled Petitioners and the Commissioner of Internal Revenue, by their respective and undersigned attorneys, that the following facts may be accepted as true reserving to either party the right to introduce any proper evidence not inconsistent therewith:

FACTS

1. The petitioner, Walter Trepte, is an individual with a principal office at 2001 Kettner Boulevard, San Diego, California.

2. The petitioner, Margaret Trepte, is the wife of the petitioner, Walter Trepte, and resides with him at 736 Rosecrans, San Diego, California.

3. For many years prior to January 1, 1942, petitioner, Walter Trepte, was doing a general contracting and construction business in San Diego County, California, the business and its assets being the community property of him and his wife, Margaret Trepte. [67]

4. As of January 1, 1942, Walter Trepte and

Margaret Trepte, the petitioners herein, and Walter B. Trepte and Albert Eugene Trepte, their sons, executed a document entitled "Articles of Co-partnership," a photostatic copy whereof may be received in evidence as petitioner's Exhibit 1.

5. Walter B. Trepte, the son of petitioners, Walter Trepte and Margaret Trepte, was born November 6, 1918, and is, therefore, 29 years of age.

6. Albert Eugene Trepte, the son of petitioners, Walter Trepte and Margaret Trepte, was born September 8, 1925, and is, therefore, 22 years of age.

7. Partnership return of said Trepte Construction Company for the year 1942 was filed with the Collector of the Sixth District of California, which return may be received in evidence as Joint Exhibit 2-A.

8. Partnership return of said Trepte Construction Company for the year 1943 was filed with the Collector of the Sixth District of California, which return may be received in evidence as Joint Exhibit 3-B.

9. Letter and deficiency statement from Commissioner of Internal Revenue was mailed to petitioner, Walter Trepte, on August 23, 1946, which letter and statement of deficiency may be received in evidence as petitioner's Exhibit 4.

10. Letter and deficiency statement from Commissioner of Internal Revenue was mailed to petitioner, Margaret Trepte, on August 23, 1946, which letter and statement of deficiency may be received in evidence as petitioner's Exhibit 5. [68]

11. Walter Trepte and Margaret Trepte, parents

of Albert Eugene Trepte, on April 18, 1942, executed an instrument entitled "Declaration of Emancipation of Minor," which may be received in evidence as petitioner's Exhibit 6.

12. Said Albert Eugene Trepte did, on April 22, 1947, after he was of age, execute an instrument purporting to ratify and confirm his act in execution of the document entitled "Articles of Copartnership," Joint Exhibit 1—which may be received in evidence as petitioner's Exhibit 7.

13. The original of a document purporting to be a note executed by Albert Eugene Trepte to Walter Trepte and Margaret Trepte, dated January 1, 1942, for \$29,941.17, with the endorsements thereon, may be received in evidence as petitioner's Exhibit 8.

14. The original of a document purporting to be a note executed by Walter B. Trepte to Walter Trepte and Margaret Trepte, dated January 1, 1942, for \$29,941.17, with the endorsements thereon, may be received in evidence as petitioner's Exhibit 9.

15. The payroll record of payments to Walter B. Trepte on the payroll sheets of Walter Trepte for July 5, 12 and 25th and August 2, 9, 16, 23, and 30th, 1935, and July 9, 16, 23 and 30th and August 7, 14, and 20th, 1936, may be received in evidence as Petitioner's Exhibit 10. [69]

16. The Employees Account record of Walter B. Trepte from the books of Walter Trepte for the years 1937, 1938, 1939, 1940, 1941 and 1942, photostatic copy of which may be received in evidence as petitioner's Exhibit 11.

17. Photostatic copies of the Employees Account record of Albert Eugene Trepte from the books of Walter Trepte for the year 1941 and Trepte Construction Company for the year 1942 may be received in evidence as petitioner's Exhibit 12.

18. Photostatic copy of five ledger sheets of Account No. 293 captioned "Walter B. Trepte Withdrawals" of the books of account of Trepte Construction Company, being ledger sheet for 1942 and sheet No. 1 for 1943 and Nos. 1, 2 and 3 from December 1943 to and including October 8, 1947, may be received in evidence as petitioner's Exhibit 13.

19. Cancelled checks of Trepte Construction Company of date, number, payee and amount as follows are the paid vouchers for expenditures in Account No. 293, Exhibit 13:

Date	Number	Payee	Amount
11/ 2/42	4504X	Walter B. Trepte	\$ 55.00
11/ 9/42	4518X	Walter B. Trepte	55.00
11/19/42	4585X	Walter B. Trepte	110.00
11/28/42	4590X	Walter B. Trepte	55.00
12/ 4/42	4597Y	Walter B. Trepte	55.00
12/19/42	4655Y	Walter B. Trepte	110.00
12/28/42	4661Y	Walter B. Trepte	55.00
1/ 2/43	4665Z	Walter B. Trepte	55.00
1/ 9/43	4722Z	Walter B. Trepte	55.00
1/25/43	5009Z	Walter B. Trepte	165.00
1/30/43	5016Z	Walter B. Trepte	55.00
2/ 5/43	5027	Walter B. Trepte	55.00
2/12/43	6009	Walter B. Trepte	55.00
2/22/43	6025	Walter B. Trepte	55.00
2/26/43	6037	Walter B. Trepte	55.00
3/ 6/43	6057	Walter B. Trepte	55.00
3/12/43	6125	Walter B. Trepte	55.00
3/19/43	6141	Walter B. Trepte	50.00
3/26/43	6154	Walter B. Trepte	55.00
3/15/43	6131	U. S. Collector of Int. Rev.....	3,509.15

Date	Number	Payee	Amount
4/ 3/43	8	Walter B. Trepte	55.00
4/ 9/43	19	Walter B. Trepte	55.00
4/16/43	100	Walter B. Trepte	55.00
4/ 7/43	13	California State Treasurer.....	388.19
4/23/43	108	Walter B. Trepte	55.00
4/30/43	119	Walter B. Trepte	55.00
5/ 7/43	125	Walter B. Trepte	55.00
5/14/43	217	Walter B. Trepte	55.00
5/21/43	228	Walter B. Trepte	55.00
5/28/43	241	Walter B. Trepte	55.00
6/10/43	279	Mission Florists	10.30
6/ 3/43	248	Walter B. Trepte	55.00
6/11/43	303	Walter B. Trepte	55.00
6/12/43	306	Collector of Internal Revenue.....	3,509.15
6/17/43	322	Walter B. Trepte	55.00
6/24/43	335	Walter B. Trepte	55.00
7/ 2/43	348	Walter B. Trepte	55.00
7/ 9/43	410	Walter B. Trepte	55.00
7/15/43	429	Walter B. Trepte	55.00
7/22/43	443	Walter B. Trepte	55.00
7/30/43	455	Walter B. Trepte	55.00
8/ 5/43	466	Walter B. Trepte	55.00
8/12/43	547	California State Treasurer	388.19
8/13/43	551	Walter B. Trepte	55.00
8/20/43	562	Walter B. Trepte	55.00
8/26/43	573	Walter B. Trepte	55.00
9/ 2/43	586	Walter B. Trepte	55.00
9/ 9/43	590	Walter B. Trepte	55.00
9/13/43	680	Collector of Internal Revenue.....	3,509.14
9/16/43	696	Walter B. Trepte	6,554.74
12/10/43	1017	U. S. Collector of Int. Rev.....	3,509.14
12/10/43	1021	Franchise Tax Commissioner	388.20
12/21/43	1041	Walter B. Trepte	5,000.00
3/13/44	1377	U. S. Collector of Int. Rev.....	2,602.24
4/11/44	1510	State Treasurer	446.88
4/11/44	1513	Collector of U. S. Int. Rev.....	710.00
6/12/44	1813	Collector of U. S. Int. Rev.....	1,420.00
7/13/44	F	County Treasurer	42.34
7/21/44	1984	Walter B. Trepte	5,302.38
9/ 8/44	2708	Collector of U. S. Int. Rev.....	1,950.00
12/21/44	2446	Walter B. Trepte	5,500.00

Date	Number	Payee	Amount
3/10/45	3646	Franchise Tax Commissioner	104.38
6/ 4/45	4200	Collector of U. S. Int. Rev.....	840.59
9/ 4/45	4758	Collector of U. S. Int. Rev.	900.00
10/26/45	5086	John M. Hotaling	23.84
12/28/45	5455	Walter B. Trepte	10,500.00
1/11/46	5589	Collector of U. S. Int. Rev.	13,000.00
3/23/46	6036	San Diego Wholesale Supply Co.	80.46
3/29/46	6058	Franchise Tax Commissioner	638.46
4/26/46	6274	Concord Radio Corp.	17.66
5/23/46	6473	New York Life Insurance Co.....	301.00
6/10/46	6625	Collector of U. S. Int. Rev.	1,227.76
6/24/46	6682	Railway Express Agency	22.44
7/15/46	6846	Walter B. Trepte	100.00
7/18/46	6864	J. M. Hotaling	18.74
7/24/46	6883	Asbestos Products Co.....	33.95
8/23/46	7117	Concord Radio Corp.	15.85
9/11/46	7283	Collector of U. S. Int. Rev.	1,700.00
9/25/46	7363	Hotel Plaza, San Francisco, Cal.	6.00
11/19/46	7747	Clarion Sound Engineering Co...	97.50
12/31/46	7989	Collector of U. S. Int. Rev.....	8,900.00
1/24/47	8151	Clarion Sound Engineering Co...	11.00
1/27/47	A	D. G. King	161.75
2/ 9/47	B	Don G. King	165.79
3/ 5/47	8439	Thearle Music Co.	577.31
3/11/47	8525	Collector of U. S. Int. Rev.	847.80
3/27/47	8571	Franchise Tax Commissioner.....	648.21
4/ 2/47	8594	New York Life Insurance Co.....	391.40
5/17/47	C	Julio Alvarez	10.00
5/28/47	8964	Bekins Van & Storage Co.....	26.74
6/ 6/47	9016	Wright Refrigeration Inc.	60.00
6/ 6/47	9033	Collector of U. S. Int. Rev.....	2,940.00
7/23/47	9331	Precision Radio	144.15
7/24/47	D	M. R. Montgomery	12.00
9/ 2/47	9516	Collector of U. S. Int. Rev.....	2,940.00
9/15/47	9643	L. E. Behymer	50.00
9/13/47	E	The Music Den	92.70
9/26/47	9664	Cash	50.00

20. Photostatic copy of four ledger sheets of Account No. 294 captioned "Albert Eugene Trepte Withdrawals" of the books of account of Trepte

Construction Company, being ledger sheet for 1943 and sheets Nos. 1, 2 and 3 from May, 1943, to and including October 14, 1947, may be received in evidence as petitioner's Exhibit 14.

21. Cancelled checks of Trepte Construction Company of date, number, payee and account as follows are the paid vouchers for expenditures in Account No. 294, Exhibit 14:

Date	Number	Payee	Amount
3/15/43	6132	U. S. Collector of Int. Rev.....	\$3,103.30
4/ 8/43	14	California State Treasurer	329.04
5/ 3/43	121	Albert E. Trepte	750.00
6/12/43	307	Collector of Internal Revenue....	3,103.30
9/16/43	699	Albert E. Trepte	6,554.74
9/13/43	681	Collector of Internal Revenue....	3,103.31
8/12/43	548	California State Treasurer	329.04
12/21/43	1043	Albert E. Trepte	5,000.00
12/10/43	1022	Franchise State Commissioner....	329.03
12/10/43	1018	U. S. Collector of Int. Rev.....	3,103.30
6/12/44	1814	Collector of U. S. Int. Rev.....	1,420.00
4/11/44	1514	Collector of U. S. Int. Rev.....	710.00
4/11/44	1511	State Treasurer	346.76
3/13/44	1376	Collector of U. S. Int. Rev.....	2,247.29
7/21/44	1985	Albert E. Trepte	5,302.38
9/ 3/44	1-B	Marshall Fridley	35.00
8/ 9/44	1-A	Marshall Fridley	35.00
9/27/44	1-C	Walter E. Smith	425.00
9/ 8/44	2709	Collector of U. S. Int. Rev.....	925.00
10/12/44	1-D	Marshall Fridley	35.00
11/ 3/44	3046	Julius Sturz	76.88
11/10/44	1-E	Marshall Fridley	35.00
12/10/44	1-F	Marshall Fridley	35.00
12/26/44	2455	Albert Eugene Trepte	5,227.40
3/10/45	3647	Franchise Tax Commissioner.....	55.65
9/ 4/45	4759	Collector of U. S. Int. Rev.....	52.23
12/28/45	5456	Albert Eugene Trepte	10,463.27
1/11/46	5590	Collector of U. S. Int. Rev.....	11,150.00
3/29/46	6059	Franchise Tax Commissioner.....	428.77
4/ 3/46	6077	SEA—The Pac. Yachting Mag...	2.05

Date	Number	Payee	Amount
6/10/46	6626	Collector of U. S. Int. Rev.....	610.97
7/ 9/46	6748	The Coronado	97.38
5/16/46	6451	California Polytechnic School.....	10.00
9/ 7/46	7223	Eugene Trepte	500.00
9/11/46	7284	Collector of U. S. Int. Rev.....	1,325.00
12/31/46	7990	Collector of U. S. Int. Rev.....	7,025.00
1/27/47	8157	Treas. of U. S. c/o Vet. Admin.....	6.40
2/18/47	8344	Treasurer of the U. S.....	6.40
3/11/47	8526	Collector of U. S. Int. Rev.....	300.55
3/27/47	8572	Franchise Tax Commissioner.....	417.13
3/28/47	8580	Treasurer of the U. S.....	6.40
4/25/47	8762	Treasurer of the U. S.....	6.40
6/ 2/47	8970	Treasurer of the U. S.....	6.40
6/ 6/47	9034	Collector of U. S. Int. Rev.....	2,250.00
7/18/47	9326	Treasurer of the U. S.....	6.40
8/15/47	9490	Treasurer of the U. S.....	6.40
9/ 2/47	9517	Collector of U. S. Int. Rev.....	2,250.00
9/ 3/47	9522	Eugene Trepte	150.00
9/ 3/47	9524	Eugene Trepte	600.00

22. Photostatic copies of ledger sheets of Account No. 283 captioned "Walter B. Trepte Capital" on the books of account of Trepte Construction Company, being 2 sheets for 1943 and 1943 through 1946 may be received in evidence as petitioner's Exhibit 15.

23. Photostatic copies of ledger sheets of Account No. 284 captioned "Albert Eugene Trepte Capital" on the books of account of Trepte Construction Company, being 2 sheets, 1 for 1943 and 1 for 1943 through 1946, may be received in evidence as petitioner's Exhibit 16.

24. A 1942 income tax return was filed by Walter Trepte with the Collector of the Sixth District of California, which return may be received in evidence as Joint Exhibit 17-C.

25. A 1943 income tax return was filed by Walter Trepte with the Collector of the Sixth District of California, which return may be received in evidence as Joint Exhibit 18-D.

26. A 1942 income tax return was filed by Margaret Trepte with the Collector of the Sixth District of California, which return may be received in evidence as Joint Exhibit 19-E. [75]

27. A 1943 income tax return was filed by Margaret Trepte with the Collector of the Sixth District of California, which return may be received in evidence as Joint Exhibit 20-F.

28. Attached hereto is certified copy of document entitled "Certificate of Partnership of Fictitious Name" of Trepte Construction Company, dated May 11, 1942, which may be received in evidence as petitioner's Exhibit 21.

29. Either party to this proceeding may withdraw any of the Exhibits referred to in this Stipulation by substituting a true photostatic copy thereof.

Dated: November 24, 1947.

/s/ GEORGE H. STONE,
Counsel for Petitioner.

/s/ WM. D. MORRISON,
Counsel for Petitioner.

/s/ CHARLES OLIPHANT, E.C.C.,
Chief Counsel,
Bureau of Internal Revenue,
Counsel, for Respondent.

J.H.P. 11/29/47; B.H.N., E.C.C., 11/29/47; C.O., E.C.C., 11/29/47.

[Endorsed]: T.C.U.S. Filed Dec. 1, 1947. [76]

Official Report of Proceedings Before
The Tax Court of the United States

Docket Nos. 12515, 12516

WALTER TREPTE and MARGARET TREPTE,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

EXCERPTS FROM THE TRANSCRIPT OF
TESTIMONY

Hearing at Los Angeles, California

Date: December 1 and 2, 1947

Before: Honorable Richard L. Disney, Judge.

Appearances: George H. Stone, 1004 San Diego Trust and Savings Building, San Diego 1, California, and William D. Morrison, 625 Bank of America Building, San Diego, California, appearing for the Petitioners. John H. Pigg, (Honorable Charles Oliphant, Chief Counsel, Bureau of Internal Revenue), appearing for the Respondent. [154]

WALTER B. TREPTE

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Walter B. Trepte.

The Court: Now, Mr. Clerk, I don't think we

made it sufficiently plain to these witnesses and they might not understand. Go out and inform them that they are not to remain within earshot of the testimony and not to listen to the testimony.

The Clerk: Yes, your Honor.

Direct Examination

By Mr. Stone:

Q. You are the son of Walter Trepte and Margaret Trepte? [78] A. That is right.

Q. The Petitioners in this case? A. Right.

Q. You are 29 years of age? A. Right.

Q. Live in San Diego? A. Right.

Q. How long have you lived there?

A. 29 years.

Q. What schooling do you have?

A. Grammar school, high school and half a year of college.

Q. What college? A. Cal. State.

Q. Did you ever work for your father in his construction business prior to January 1st, 1942?

A. Yes.

Q. When did you first work for him?

A. The summer of 1935.

Q. Did you work in 1936?

A. Worked in 1936.

Q. For how much of the year?

A. Summer, two months.

Q. In 1937, what did you work?

A. I didn't work at all in 1937. [79]

Q. In 1938?

A. I worked in the fall of 1938.

(Testimony of Walter B. Trepte.)

Q. Did you work at all in 1939?

A. All of 1939.

Q. During those times what were you doing, all the times I mentioned.

A. In 1935 I was a truck driver, and in 1936 just on the truck driving, and 1938 I worked in the office as assistant to the bookkeeper, and timekeeper, and various duties around the office that are rather hard to classify.

Q. Did you work in 1940?

A. In 1940, from July on.

Q. Where did you work?

A. July and August, or July, I went to work for Walter Trepte. From August on to the end of the year for Golden and Trepte.

Q. Where? A. At North Island.

Q. What were you doing?

A. I was in the timekeeping office.

Q. Did that occupation keep up the rest of 1940?

A. That completed 1940.

Q. 1941 where did you work?

A. January through May or June I continued to work at the Naval Air Station, timekeeping office, and then from [80] July on to the end of the year I worked for Golden & Trepte Construction Company at the naval fuel depot.

Q. The naval fuel depot is in San Diego?

A. That is right.

Q. And the naval air station where you were working is in San Diego Harbor?

A. That is San Diego, yes.

(Testimony of Walter B. Trepte.)

Q. What work were you doing at the naval air station and at the fuel depot?

A. At the naval air station for the full time I was there I was in the timekeeping office. At the fuel depot I was in charge of personnel and time-keeping, did some of the bookkeeping, took care of certain security work that the navy requested.

Q. In that position did you do any hiring and firing of the men? A. All of it.

Q. Was it all office work?

A. Practically all, yes.

Q. You entered into this partnership agreement which has been referred to here, dated January 1, 1942, did you? A. Yes.

Q. Was that talked over between you, your father and mother before it was made?

A. Fully discussed, yes. [81]

Q. Do you have any physical disability that prevents you from doing outside hard physical labor?

A. No, none that I know of.

Q. You did have at one time.

A. Yes, at one time I did have.

Q. Entirely free of it? A. Yes.

Q. The discussion of the making of the partnership agreement, if you can remember, what was the first brought out, at what time?

A. As I remember, it was in the fall of 1941.

Q. Was the immediate cause or purpose of that discussion mentioned by your father at that time?

A. It was generally spoken of as a possibility of so many trips by plane to San Clemente Island.

(Testimony of Walter B. Trepte.)

To land at San Clemente Island was very treacherous, there are certain dangers to a plane, so he felt that at the time some of the operation of the company should be put into other hands besides his own.

Q. That operation at San Clemente Island was under whose jurisdiction?

A. It was in conjunction with the Golden & Trepte Construction Company.

Q. Did your father take trips to the island?

A. Quite often. [82]

Q. By what means?

A. Airplane altogether.

Q. Do you know how far that is from the coast?

A. Oh, I would say about 100 miles.

Q. You have never been there?

A. Yes, I was there once.

Q. What compensation did you draw during that time from 1935 through 1941?

A. Well, just pay. I was on the payroll as an employee.

Q. At what rate?

A. Well, it went up as time went along. It started out at about \$15 a week, went up to around \$20, \$22.50, up to \$25 and \$30. As I remember when I worked for Golden & Trepte it stopped at around \$35.

Q. Since the formation of the partnership, January 1, 1942, where have you worked?

A. Let's see. The first three months of 1943 and four months of 1942 I worked for Golden & Trepte finishing up this naval fuel depot contract that was

(Testimony of Walter B. Trepte.)

in process of being completed. And then toward the end of that, which was about June or July, I went to work for the Golden Trepte Company at the Rohr Aircraft Corporation and then in about October or November I went to the Golden Trepte Construction Company at the naval air station on North Island, and I [83] stayed there until the completion of the contract in approximately October or November of 1943, and then from then on until about, I believe about the middle of 1944 I worked again at the Rohr Aircraft Corporation for the Trepte Construction Company, and then following that except for a brief period of about four months on the navy contract at the naval air station I worked on the Trepte Construction Company work.

Q. How were you paid during that period from January 1st, 1942 on?

A. Paid a regular salary.

Q. From Trepte Construction Company?

A. From Trepte Construction Company, yes.

Q. Did you also receive payment on the payrolls of the company on the other jobs.

A. Yes. At the second Rohr job, it was a DPC contract, I received extra remuneration.

Q. What was done with the extra remuneration?

A. That was payed back into the partnership.

Q. Into the Trepte Construction Company?

A. That is right.

Q. How much per week were you receiving

(Testimony of Walter B. Trepte.)

from the Trepte Construction Company from 1942 to 1946? A. Fifty-five dollars.

Q. Fifty-five dollars a week? [64]

A. Yes.

Q. During that period from 1942 to the present, you had no other remuneration, did you?

A. Just that that was received from Rohr.

Q. Any adjustment of salaries in the partnership?

A. Yes, there was an adjustment at the end of each year up to a sum of around forty-eight hundred dollars.

Q. You mean adjusting that fifty-five dollars a week up to the amount of forty-eight hundred dollars a year? A. That is right, yes.

Q. For what years was that done?

A. 1943, 1944, I believe 1945, 1946.

Q. At that time was there any adjustment of your father's drawing?

A. I believe there was, but I can't remember the exact figure.

Q. In the last two years, what have been your duties for Trepte Construction Co.?

A. Well, to generalize I would say office manager.

Q. Are you hiring and firing people?

A. Yes.

Q. Do you ever sign checks? A. Yes.

Q. Under the partnership agreement, you have a twenty-four percent interest in the partnership profits. Do you use any of those proceeds for your

(Testimony of Walter B. Trepte.)

own personal use? A. No.

Q. Some of them were withdrawn, shown in the exhibit [85] here, in payment of your note?

A. Yes, that is right.

Q. Under Exhibit 13 it shows Walter B. Trepte authorized on March 20, 1942, the distribution of an item to the Red Cross fund, \$5.00. Was that yours?

A. Yes, that was mine. I will have to amend my answer, in that there were various small withdrawals that I made during the first two years.

Q. And on May 9, 1947, there is a further amount shown of \$10.30. Was that for your personal use? A. I imagine it was.

Q. Are you familiar with the books of the Trepte Construction Co.?

A. Quite familiar, yes.

Q. Do you know what this Account Number 293, Walter B. Trepte Drawing, is?

A. That was an original account of withdrawals, as I remember. It is not in use.

Q. Do you know what is credited to it?

A. I believe in the beginning that my salary was, but I am not—I am a little hazy on that.

Q. Your check, wasn't it?

A. That was my check.

Q. What else was credited to that?

A. I believe—let's see—my payments on notes, those I remember too.

Q. December 8, 1942, typewriter, typewriter desk and posture chair, \$97.63. February 8, 1944,

(Testimony of Walter B. Trepte.)

record album, [86] Thearle Music Co., \$32.40. Is that yours? A. That is mine.

Q. And December 26, 1945, J. W. Campbell, 1,000 common brick, \$20.00. Is that yours?

A. Yes.

Q. Under date of March 23, a radio transiever for \$80.46. A. That is personal.

Q. June 24, 1946, Railway Express Agency, pickup from gramophone shop, \$20.37.

A. That is mine.

Q. July 15, Plaza Hotel, San Francisco, check for \$100.00. Is that yours?

A. That is mine, yes.

Q. July 18 package from gramophone company, \$18.74. A. That is right.

Q. Ditto for \$35.00. A. That is right.

Q. August 23, Concord Radio Corporation, merchandise, \$13.85. A. That is mine.

Q. There are items like this one here, April 15, 1943, first quarter income tax. Was that for your individual income tax? A. Yes.

Q. April 7, first third state income tax, was that for your individual income tax? A. Yes. [87]

Q. You referred to the adjustment of partners' salaries. There is an item on December 30, 1944, which shows partners' salaries, adjusting 1944 salary, to \$4800.00 from \$2605.00, \$2195.00.

A. That is one, yes.

Q. The same thing was done in subsequent years? A. That is right.

Q. Is it a fact that on a great many or most

(Testimony of Walter B. Trepte.)

of the items charged against you, you either drew the checks or signed them? A. I did.

Q. On the Trepte Construction Co. account?

A. That is right.

Q. And they were charged to you on your withdrawal account? A. That is right.

Mr. Pigg: Let him testify, please.

The Court: Don't lead your witness.

By Mr. Stone:

Q. Has your interest in the partnership the sum of twenty-nine thousand, nine hundred and some dollars on your original purchase increased?

A. Yes, it has.

Mr. Pigg: I will object on the ground that calls for a conclusion, your Honor.

The Court: The objection is overruled. Now, unless it is made more particularly it would not be worth very much, but the objection is overruled. [88]

By Mr. Stone:

Q. I show you Exhibit No. 15, headed Walter B. Trepte, Capital, and refer you to the first item, March 31, 1943, transfer of capital from Walter Trepte, \$28,941.17, and on the next page, the second item, September 18, 1943, adjust error in previous entry recording share purchased from Walter Trepte \$1,000.00. What do those two items represent?

A. They represent my original ownership or original share in the partnership.

Q. And on March 31, 1943, appears "P. L. 1942". What does that refer to?

(Testimony of Walter B. Trepte.)

A. Profit and loss.

Q. \$29,665.07. What does that represent?

A. That was representative of about the same thing, as I understand it.

Q. Your share of the profits for that year?

A. Yes.

The Court: Don't lead your witness.

By Mr. Stone:

Q. In 1944, February 16, Thursday item, "Closing 1943 entries, \$23,664.00". Do you know what that item represents?

A. That was, I believe, profits for that year.

Q. And December 30, 1944, "Profit and Loss, 1944 distribution, \$8,336.56."

A. That is profit and loss for that year, my share of it. [89]

Q. And on December 31, 1945, "Profit and Loss, 1945 distribution, \$25,389.29."

A. That was my share of it.

Q. Again December 31, 1946, "Profit and Loss, 1946 distribution, \$25,067.35."

A. That was my profit for that year.

Q. In the right hand column, headed Balance, the amount of \$62,506.03, what does that represent?

A. That represents my total share of the partnership as set at that time.

Q. I show you Exhibit 11, which is called Employee S. S. Account for Walter B. Trepte. On the last page of his record of 1942, was one column \$40, 40 cents in two other columns.

(Testimony of Walter B. Trepte.)

A. Those represent social security and unemployment tax.

Q. Where were you working at that time, from January 1942 through June 20, 1942?

A. At the Naval Fuel Depot.

Q. Were those deductions paid to the government?

A. I don't believe they were. I believe they found it was an error.

Q. When you were working, you said for the Golden & Trepte Construction Co. and Rohr, were there deductions as—of social security?

A. I believe there was for a portion of a couple of [90] weeks, then it was stopped.

Q. And what was the salary that you said you turned in to the Trepte Construction Co. for Rohr, was it the net amount or the gross?

A. I believe it was the—I believe the net amount.

Q. At the time you spoke of having the first discussion with your father of the formation of the partnership, was the question of tax reduction or avoidance brought up? A. No.

Q. Was it at any time during the discussions regarding the formation of the partnership and the purpose of it?

A. No, it never was mentioned.

Mr. Stone: You may cross examine.

Cross Examination

By Mr. Pigg:

Q. Mr. Trepte, what did you say the degree of

(Testimony of Walter B. Trepte.)

your familiarity is with the books and records of the Trepte Construction Co.?

A. I have a fairly good——

Q. Do you keep or make any of the records in those books?

A. No, I have not made any entries except within the last year, certain phases of the books.

Q. When did you first see or examine the records as to which you have just testified here under direct examination? [91]

A. Each year I have seen them.

Q. What was the extent of your examination of all those accounts each year, and for what purpose was the examination made?

A. For my own information, a rather cursory examination.

Q. Are you a bookkeeper?

A. I wouldn't call myself a full accountant.

Q. Do you understand the difference between debts and credits? A. Well, certainly.

Q. The theory of accounting?

A. Beg pardon, didn't get that?

Q. The theory of accounting?

A. A good percentage of it. I wouldn't say I was really polished in it.

Q. When did you examine these accounts for the purpose of giving your testimony at this trial?

A. Of course I have seen them practically every day for the last year or so, putting in the entries in the particular books that I work upon.

Q. Mr. Trepte, here is Petitioner's Exhibit No.

(Testimony of Walter B. Trepte.)

9 which is the note that has been stipulated that you signed in connection with the transaction in which the alleged partnership agreement was executed on January 1, 1942. A. Yes. [92]

Q. You recognize that note, do you not?

A. I do. I signed it.

Q. This is your signature?

A. That is right.

Q. It bears the endorsement on the face of it "Cancelled December 29, 1945."

A. That is when the last payment was made, at that time.

Q. It is true, is it not, that each of the payments you have described them, were made from the profits of the business of the Trepte Construction Co.?

A. Yes.

Q. Mr. Trepte, assuming that the stipulation of facts in this case shows that the amount of \$6554.74 is charged to your withdrawal account on September 16, 1943, it is a fact, is it not, that that amount was withdrawn for the purpose of making the payment on the note? A. Yes, I believe it was.

Q. And isn't the same thing true as to the item of five thousand dollars charged to your account on December 21, 1943, assuming there was such an item charged to your account on that date?

A. I believe partially, yes.

Q. Isn't the same thing true as to an amount of \$5302.38, if such an amount was so charged in the account on July 21, 1944? [93]

A. Part of it, yes.

(Testimony of Walter B. Trepte.)

Q. And isn't the same thing true as to the amount of \$5500.00 assuming that such an amount was charged to the same account on December 31, 1944? A. Yes, I believe so.

Q. Isn't the same thing true as to the amount of \$10,500.00, assuming that the amount is charged to the same account on December 28, 1945?

A. Yes.

Q. Assuming that these five items equal or aggregate \$32,857.12, which amount exceeds the face of this note, which is \$29,947.17, by the amount of approximately \$2910.00, you notice it is more than the whole amount as contemplated by the face of the note. A. Yes.

Q. Mr. Trepte, that purports to be your income tax return for the year 1942. Is it or is it not?

A. It is.

Q. Is that your signature? A. Yes, sir.

Q. Page number one? A. That is right.

Q. Does the income as reported on the return represent that portion of the income of the Trepte Construction Co. for that year? [94]

A. Yes, sir.

Q. Is there any income from any other source reported in the return?

A. I believe one small—

Q. For instance, what is it? To save time, I will call your attention to \$29,529.06. What does that represent, do you know?

A. That is my amount of my share at that time.

Q. Do you know what this item of \$1895.85 represents?

(Testimony of Walter B. Trepte.)

A. That is what I received from Golden & Trepte.

Q. Golden & Trepte? A. That is right.

Q. Construction Co.? A. That is right.

Q. And now, isn't the amount of tax shown as due on your 1942 return the amount of \$14,036.58?

A. It is.

Mr. Pigg: I ask that this be marked for identification as Respondent's Exhibit G. I believe, your Honor, I should perhaps offer this later, instead of offering it at this time in the Petitioner's case.

The Court: Do as you please, they are a part of your case.

Mr. Pigg: I will offer that return at this time, to save time, as Respondent's Exhibit G. [95]

The Court: Respondent's Exhibit G is admitted in evidence.

(The document above-referred to was received in evidence and marked Respondent's Exhibit G.)

By Mr. Pigg:

Q. Mr. Trepte, assuming that the stipulation of facts, and I refer particularly to paragraph 19, the stipulation of facts shows that the following amounts on the following dates were charged to the Withdrawal Account, namely on March 15, 1943, \$3509.15, June 12, 1943, \$3509.15, September 1943, \$3509.14, December 10, 1943, \$3509.15 and assuming that those four amounts equal or aggregate \$14,036.59, would you say it is or is not a fact that the

(Testimony of Walter B. Trepte.)

checks were issued to pay your income tax on your return for 1942? A. They were.

Q. Is that your income tax return for the year 1943? A. Yes, sir.

Q. Is it your signature on the face of it?

A. That is right.

Q. There is an item of \$25,523.78 reported as income on your return.

A. That is right. That is my share of profit for that year.

Q. Of the Trepte Construction Co.?

A. That is right.

Q. That shows on line 20 unpaid balance of 1943 income [96] and victory tax, the amount of \$2,602.24, does it not? A. It does.

Mr. Pigg: I offer this return in evidence as Respondent's Exhibit H. Any objection?

Mr. Stone: No. May I see it a minute?

The Court: Respondent's Exhibit H is admitted in evidence.

(The document above-referred to was received in evidence and marked Respondent's Exhibit H.)

By Mr. Pigg:

Q. Mr. Trepte, assuming that the stipulation of facts shows the amount of \$2602.34 was similarly charged to your Withdrawal Account on or about March 13, 1944, would you say that it is or is not a fact that the amount represented a check drawn to pay the tax shown on your 1943 return?

A. I believe it was.

(Testimony of Walter B. Trepte.)

Q. Were you in military service at any time during that year? A. No, I was not.

Q. Mr. Trepte, there are a number of other items—I am trying to save time—shown in the stipulation of facts paragraph 19, as checks issued to the collector of internal revenue. Is it or is it not a fact that the money, that in each such instance of such payment the item represents checks drawn against the funds of the Trepte Construction Co. to pay [97] the tax reported on your income tax return for that year? A. Yes, it would.

Q. And now would that be true also, Mr. Trepte, as to state income or other taxes in the case of any such items charged to your Withdrawal Account and labeled as checks to the California State Treasurer or franchise tax commissioner. A. Yes.

Q. That means that we are to understand those payments have been made on account of income reflected in the returns of the Trepte Construction Co.? A. Yes, they would.

Q. One question. When the execution of the agreement as of January 1, 1942, was discussed, I believe you said that was in the fall of 1941?

A. Yes, it was.

Q. Where did that first discussion take place?

A. It was at home and in our office.

Q. Who was present when it was discussed at home?

A. My father and my mother and myself, my brother Gene and myself.

(Testimony of Walter B. Trepte.)

Q. Who was present when it was first discussed at the office?

A. My father, my brother Gene and myself.

Q. And now, it is fair to assume, is it not, that it [98] was discussed on numerous other occasions prior to the time it was finally signed?

A. Oh, yes, in past years.

Q. Did all those discussions likewise take place either at your residence or at the office?

A. That is right.

Q. And is it likewise true that there were present at each discussion only the persons we have already mentioned?

A. As far as my memory serves me, that is correct.

Q. Do you know a Mr. Essenhoff?

A. Essenhoff?

Q. The name Carl N. Essenhoff?

A. That is right.

Q. What is his business or occupation, if you know?

A. He is a certified public accountant.

Q. Do you know whether he has ever done any work for the Trepte Construction Co.?

A. Yes, he has.

Q. Did he do that work before January, 1942?

A. I believe he did.

Q. And some since?

A. Some since, every year.

Q. Are you sure that Mr. Essenhoff was not present at these discussions, or any of them?

(Testimony of Walter B. Trepte.)

A. Not to my memory, not as far as I can remember. [99]

Q. You are not prepared to testify he was not?

A. No, I would say he was not.

Q. You are sure he was not?

A. He was not, no.

Q. Not at any one of them.

A. Not at any of them, no.

Q. Did you personally discuss the matter with him at any time? A. No, I never have.

Q. Do you know whether your father did?

A. I couldn't say.

Q. Do you know whether your mother did?

A. I couldn't say that either.

Q. Do you know whether your younger brother did? A. I couldn't say that.

Q. You are the older brother, are you not?

A. That is right.

Q. I believe you said that you had worked for the Trepte Construction Co. at least on various occasions or periods since sometime in 1935?

A. That is right.

Q. The Trepte Construction Co. in 1935 was the business of your father, Walter B. Trepte, was it?

A. Walter Trepte.

Q. I mean Walter Trepte, the same business that has [100] been carried on since that time down to the present date, is it not?

A. That is right.

Q. Prior to 1941, what generally, if you know,

(Testimony of Walter B. Trepte.)

was the major or type of construction work performed by the Trepte Construction Co.?

Mr. Stone: May I interrupt there? I think that is a misstatement, because it was not the Trepte Construction Co. until after January 1, 1942. It might confuse the facts.

Mr. Pigg: I will take that. I don't want any misunderstanding.

By Mr. Pigg:

Q. Under what name was the business of your father carried on prior to January 1, 1942?

A. Walter Trepte Builder.

Q. What did he build prior to the year 1941, for the most part?

A. All types of construction, but particularly types of a commercial nature, such as store buildings, garages, work of that type, some warehouses.

Q. It was either all or mostly on contract construction? A. Yes, it was.

Q. And it necessitated a person having knowledge of construction engineering and prices, markets, and materials? A. Yes. [101]

Q. Knowledge of those and simliar matters was necessary in order to qualify a person to submit or make a bid for a job of that kind, isn't that right?

A. Yes, sure.

Q. But who prior to 1941, as far as Walter B. Trepte Builder was concerned, was possessed of that knowledge or qualification?

A. We had my father, and then in past years we have had other estimators in there.

(Testimony of Walter B. Trepte.)

Q. Other estimators you mean employed?

A. That is right.

Q. As an employee? A. That is right.

Q. But as far as any bid figure or estimate that was made and prepared by any such employee, it was ultimately determined by your father whether it was the proper bid that would be submitted as an offer or as a bid for the construction job?

A. Yes, it would have been examined by him.

Q. I assume that since 1941 the same has been true?

A. In some cases. Many things I look at them first, the smaller type of jobs.

Q. The smaller type of jobs? A. Yes.

Q. Beginning in 1941, is it not a fact, that all or [102] practically all the construction work performed by Walter Trepte Builder was on government contract? A. Yes.

Q. Beginning in 1940 or 1941?

A. Yes, yes. It—

Q. How long prior to January 1, 1942, were you familiar with the business known as the Golden & Trepte Construction Co.?

A. I was employed by that company in the month of its inception and I worked clear through I think I believe it was to 1943 when we finally wound up the large contract for the navy station at North Island.

Q. Do you know whether it was in the year 1940 that your father and Mr. M. H. Golden associated themselves in business known as the Golden

(Testimony of Walter B. Trepte.)

& Trepte Construction Co.? A. They did.

Q. And it was that year?

A. That is right.

Q. What type of construction work was your father engaged in at that time in 1940?

A. Mostly work for the U. S. Navy.

Q. Was that the contract or the job that is identified in the contract of January, the agreement of January 1, 1942, as the naval air station job equity, do you know?

A. That was the contract, NOY-4205. [103]

Q. That was a government contract?

A. That is right, the Navy.

Q. And that contract was obtained really in 1940? A. In 1940, in the summer of 1940.

Q. Golden and your father associated themselves primarily for the purpose of undertaking that contract, did they not?

A. I believe that, and several others.

Q. Do you know whether there is in the courtroom today the originals of those government contracts? A. Copies only.

Q. Copies only? A. Copies of the original.

Q. And now, Mr. Trepte, I hand you Petitioner's Exhibit No. 4. A. Yes.

Q. That is described as the deficiency notice mailed to your father, Walter Trepte.

A. Yes.

Q. I call your attention to page 2 of the statement which is attached to the letter. A. Yes.

Q. And to an item described as salary paid to

(Testimony of Walter B. Trepte.)

Walter B. Trepte, \$495.00. A. Yes. [104]

Q. Then on page 5 of the same statement in the same exhibit, I call your attention to an item described as salary paid to Walter B. Trepte, \$2530.00.

A. Yes.

Q. Are you the Walter B. Trepte?

A. I am.

Q. These adjustments of salary that you referred to as having been made at the end of one or more years, I believe including 1944—at any rate, it is correct, is it not, to assume that those salary adjustments were made entirely in accordance with the plan as contemplated by this agreement of January 1, 1942? A. Yes, they were.

Q. And the amounts were fixed and determined as provided in that agreement? A. Yes.

Q. Mr. Trepte, I will hand you Exhibit 15, which I think is the same exhibit you were examining a while ago, at least concerning which the counsel for the Petitioner was questioning you.

A. Yes.

Q. And that is captioned Walter B. Trepte, Capital. A. Yes.

Q. You recognize that? A. I do. [105]

Q. And the first item below is \$28,921.47. It is fair, is it not, to assume that that is the item which is associated with the note for \$27,000.00 which is in evidence? A. Yes, it is.

Q. There is an error of \$1,000.00, is there not?

A. I believe there is.

Q. It is \$28,000.00. Is there another entry that

(Testimony of Walter B. Trepte.)

corrects that error later on? A. Later on.

Q. At the time that corrected entry was made to this account, Exhibit 15, do you know what if any entry was made in the Capital account of your father, Walter Trepte?

A. I believe there was a debit made.

Q. A corresponding debit? A. Yes.

Q. As to the various and sundry small items, including the Red Cross contributions, these small radio items and items that you had purchased, they were items you had purchased and the amount paid was paid by the Trepte Construction Co. and charged to your account?

A. Yes, that is what they are, yes.

Q. Now, were those items checked off, I mean set off or offset against your salary of \$55.00 a week or thereabouts? A. Would you repeat that?

Q. Were those items set off or balance or offset against your salary that you were drawing?

A. No, they would be against my capital.

Q. Charged to your Withdrawal Account?

A. That is right.

Q. To your capital account and not against your compensation? A. Yes.

Mr. Pigg: I think that is all, your Honor.

The Court: Any further direct examination?

Redirect Examination

By Mr. Stone:

Q. Mr. Trepte, did you hear the partnership agreement read in court this afternoon?

A. I did.

(Testimony of Walter B. Trepte.)

Q. You had read it before you had signed it, had you not? A. Oh, yes.

Q. We have referred to the fact of the division of the profits on the basis of 26-26-34-24 percent. Do you know of your liability, if the company have losses, how that would be?

A. I believe I would have the same liability.

Q. You were asked if you were in the military service and answered it no. Why were you not?

A. I was 4-F. [107]

Q. For what reason? A. For eye trouble.

Q. He read a few items from this account of Walter B. Trepte withdrawals. The counsel was referring to a few and there were a great many others, were there not, that were charged to you out of this Withdrawal Account for your own expenditures? A. Yes.

Q. Are these that we have listed in our stipulation in paragraph 19, Clarion Sound Engineering Co., \$97.50, is that one of those?

A. That is mine.

Q. D. G. King, \$161.75?

A. That was one of mine.

Q. What was that for?

A. That is radio parts.

Q. Thearle Music Co., \$577.31. Was that yours?

A. That was mine, yes.

Q. For your personal radio?

A. I think so, yes.

Q. And New York Life Insurance Co., \$391.40?

A. That is my personal policy, yes.

(Testimony of Walter B. Trepte.)

Q. And Precision Radio, \$144.15?

A. That was some of my personal.

Q. L. E. Behymer, \$50.00? [108]

A. That is mine.

Q. The Music Den, \$92.70?

A. That is right.

Mr. Stone: That is all of this witness.

The Court: We will take a recess at this time of ten minutes.

(Short recess taken.)

The Court: Proceed with the trial.

Mr. Pigg: Your Honor, there are two or three other questions I would like to ask the witness. I believe you had finished on your redirect.

Mr. Stone: I had finished, yes, sir.

Recross Examination

By Mr. Pigg:

Q. Mr. Trepte, I believe you said that you signed checks. A. Yes.

Q. Against the partnership account?

A. Yes.

Q. The bank account. Who authorized you to sign those checks?

A. Well, we authorized ourselves by the partnership agreement. One section of it says that the partners shall have the right to. I will go further, saying that the account before it became the Trepte Construction Co. was in [109] the name of Walter Trepte before it was changed to the Trepte Construction Co. Then I was authorized to sign for Trepte Construction Co., and you understand that

(Testimony of Walter B. Trepte.)

I signed checks for Walter Trepte as far back as about I would say 1937, on the general account, and then later on for simplicity we divided it up into a general and payroll account, and I signed both of them.

Q. In other words, you were authorized by your father to sign checks against his business account before as well as after January 1, 1942?

A. That is right, yes.

Q. And after 1942, you were authorized in the manner as described in the agreement of January 1, 1942?

A. That is right, yes.

Q. As to the employees that you hired and fired, I believe you said you did?

A. Yes.

Q. When did you hire the first employee?

A. Well, that is rather hard for me to state, because I did on occasion hire them back in the days when I was working for my father as Walter Trepte, Builder.

Q. Was that true also as to the Golden & Trepte Construction Co. when you worked for them?

A. I didn't hire there until about when I started on the fuel depot in about May of 1941, I hired there. In fact [110] I did all of the clerical work that was done on that job.

Q. Now, assuming that the agreement of January 1, 1942, is silent so far as who was authorized to hire and fire employees, on whose authority did you hire and fire employees?

A. My father's, and then of course with the

(Testimony of Walter B. Trepte.)

Golden-Trepte, both my father and Mr. M. H. Golden.

Q. And before you hired and fired any such employee, would you discuss it with your father?

A. Not always. Certain run of the mill employees, that were on an hourly or day to day basis I just hired and fired as the need for them.

Q. As the business of the department?

A. That is right.

Q. In other words, when you had taken on a new contract, a new job, you kept a certain number of representative employees and hired the laborers and the rest of the jobs? A. That is right.

Q. And you did some of the hiring and firing under those circumstances?

A. I did practically all of it.

Q. And the same before as well as after January 1, 1942? A. That is right, yes.

Mr. Pigg: That is all.

Mr. Stone: That is all. If the court please, could [111] counsel excuse this witness from further attendance at court?

Mr. Pigg: As far as I know now.

Mr. Stone: All of them have to go home, and I want to get two more excused by the end of the day.

Mr. Pigg: I can say I know of no reason at the moment why you should recall him.

The Court: Of course, it is rather dangerous to leave it indefinite, if you might want him here. If you want him here we can't wait while you go and get him, once you definitely excuse him.

Mr. Pigg: That is agreeable to me, your Honor. I don't know any reason why.

The Court: Very well. This witness is excused from further attendance.

(Witness excused.)

Mr. Stone: I will call Eugene Trepte.

Whereupon,

ALBERT EUGENE TREPTE

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

The Clerk: Tell us your name, please.

The Witness: Albert Eugene Trepte. [112]

Direct Examination

By Mr. Stone:

Q. How old are you? A. 22.

Q. When did you become 21?

A. September 8, 1946.

Q. Have you ever worked for your father in his construction business? A. Yes, I have.

Q. When?

A. In 1941 I worked out at the fuel depot and in 1942 I worked—these are the summers I worked—at Ryan's new addition of the new building. In 1943 I went to summer school and I didn't work that year on account of being drafted. The next years I was in the Navy. In 1946 I was out of the service and about a month there I didn't do anything after getting out of the service, and then I worked down there in a capacity of rustling ma-

(Testimony of Albert Eugene Trepte.)

terial. This year, 1947, I worked in the office taking care of bills.

Q. How long were you in the service?

A. From January 28—no, February 28, 1944, until June 7, 1946.

Q. Where did you serve?

A. I served in the Navy aboard—I was connected with the western sea frontier, southern sector. I was aboard a [113] patrol ship operated out of southern frontier base, San Diego.

Q. Where did you patrol?

A. We patrolled the Guadalupe patrol, which is about 600 miles off San Diego. We patrolled the sea patrol a month at a time.

Q. What kind of vessel was it?

A. It was a 205 foot schooner that was sail that was one of the ships that was turned over to the government for this Pacific patrol.

Q. What were your main duties on that ship?

A. Well, I held the rate when I first went aboard of a First Seaman, first, and then as the war pressure came on we lost officers who had experience in sailing and I was put in the capacity of Leading Seaman of handling sails and handling the docking of the ship. When I was schooled for this job I went into the quartermaster department.

Q. And as Sailing Master you directed the men, did you?

A. Yes, even directed officers for a while.

Q. This work in 1941 at the fuel depot, how much were you paid?

(Testimony of Albert Eugene Trepte.)

A. I believe it was about 75 cents an hour.

Q. What kind of work were you doing?

A. I was crew for awhile on a duck, and then I was also working with the piledriver. [114]

Q. In 1942 at the Ryan building, what kind of work were you doing?

A. I was working as assistant carpenter, assistant.

Q. What were you paid then?

A. I believe it was about 85 cents an hour.

Q. Have you done any work for the partnership since January 1st, 1942, without wages?

A. Yes, I have.

Q. What and where?

A. In 1943, when the partnership was formed I was working in the delivery of material and rustling of material. That gave me a chance to get around the jobs and understand what was going on and what jobs we did have on, being completed and under construction, and also I would go with my father to look at different jobs that we were estimating.

Q. Discuss them with him? A. Yes.

Q. In the work in 1946 on material and 1947 in the office, were you paid anything for that?

A. No, sir, I wasn't.

Q. What schooling have you had?

A. Well, after I was released from the service—before I was, while I was away, my father and I talked it over one time when I had a leave, about where I wanted to go, and I wanted to go into the

(Testimony of Albert Eugene Trepte.)

business. We were looking for a [115] school that I could get through in not too much time, so I could get into business instead of going through so much technical basis, that I wanted to learn more of the practical end of it, so he inquired around and found a school, what they call the California State Polytechnic College at San Luis Obispo, where I am now enrolled in my second year.

Q. What are you taking there?

A. Taking architectural engineering.

Q. How long a course are you taking?

A. I plan to take the two year course.

Q. To finish this coming spring?

A. Finish this year.

Q. Had you planned any education beyond the high school when you went into service?

A. Yes, my father had a two year's education the same as I am having in a very similar school, before he entered his partnership with his father.

Q. Did you plan before you went into the service to go on to school? A. Yes.

Q. As you have done? A. Definitely.

Q. It was interrupted then by the service?

A. Yes.

Q. I show you Exhibit No. 7 and ask you if you signed [116] that. A. Yes, I did.

Q. And you knew what you were doing when you did it? A. Yes.

Q. That refers to a partnership agreement made January 1st, 1942. Do you remember when that was made? A. When this was?

(Testimony of Albert Eugene Trepte.)

Q. When the partnership agreement was made.

A. Yes, it was January 1st, 1942.

Q. Had you discussed it with your father before that time?

A. Yes.

Q. You remember giving your note for the purchase price?

A. Yes, I do.

Q. And the note has been entirely paid off out of the profits of the business.

A. Yes, I believe it was paid off in 1945.

Q. Have you used any of the profits of the business for yourself?

A. Yes, I have.

Q. We listed various checks in our stipulation, paragraph 21, that have been drawn against an account called Albert Eugene Trepte Withdrawals. I will call your attention to a few of them and ask you to tell what they are. For [117] instance, November 3, 1944, to Julius Sturz for \$76.88. What is that?

A. Right now I really don't recollect what that was.

Q. Well, I might tell you he is a tailor in San Diego.

A. Oh, yes. I remember I had a riding suit made at that time, yes.

Q. There is a check here on October 12, 1944, to Marshall Fridley, \$35.00. What is that?

A. That was for board for a horse.

Q. And there are a number of others for that same amount.

A. Yes.

Q. There is an item Sea, the Pacific Yachting Magazine, \$2.05. Is that yours?

(Testimony of Albert Eugene Trepte.)

A. That is right.

Q. The Coronado, \$97.38.

A. That is right.

Q. California Polytechnic School, \$10.00

A. That is right.

Q. And September 7th, 1946, \$500.00. What is that for?

A. That was for my school. I transferred that money up in the bank up there.

Q. And a number of items, the first one March 28, 1947, payable to the Treasurer of the United States, \$6.40. What are those? [118]

A. That is for my insurance, my Navy insurance.

Q. On September 3, 1947, a charge to Eugene Trepte, \$150.00.

A. That was for some expense that I just can't remember now what that was.

Q. And at the same date one to you for \$600.

A. That was for this fall term at school. That was for—I remember now, those were two checks I think that were going to be transferred up to school.

Q. The two checks totalling \$750.

A. Yes.

Q. There are other withdrawals, payable to the United States Collector of Internal Revenue in various sums. Do you know what those are for?

A. Yes, taxes.

Q. And to the California State Treasurer, do you know what those are for?

(Testimony of Albert Eugene Trepte.)

A. No, I don't really right now, no.

Q. There are others made to the Franchise Tax Commissioner, various items. Do you know what those are?

A. No, I don't.

Q. Here is Walter E. Smith for \$425, September 27, 1944.

A. That was a road wagon I bought from Mr. Smith.

Q. To go with the horse? [119]

A. That is right.

Q. Do you have any allowance from your parents for your expenses?

A. No, I don't.

Q. You are paying that entirely yourself?

A. Yes.

Q. Have you had any allowance since you started in the Navy?

A. No, sir.

Q. The money you received as wages from the Navy, did you use it yourself, or send any to your parents?

A. No, I used it myself, and a lot of it went into my personal savings.

Q. You still have a personal savings account?

A. Yes.

Mr. Stone: You may cross examine.

Cross Examination

By Mr. Pigg:

Q. Mr. Trepte, what date did you say you went in the Navy?

A. February 28, I believe February 28 I was sworn in here in Los Angeles, 1944.

Q. 1944?

(Testimony of Albert Eugene Trepte.)

A. And June 7th I was discharged at San Pedro, 1946.

Q. When did you first enter the California Polytechnic [120] School?

A. I entered Cal Poly on September 11, 1946.

Q. You mentioned the fuel depot. To what does that refer?

A. The fuel depot, we were building a pier and sea wall.

Q. Where?

A. At the naval fuel depot in Point Loma.

Q. Is that near San Diego? A. Yes.

Q. In what year was that being built?

A. That was—the fuel depot I believe was in 1941.

Q. Mr. Trepte, I hand you what purports to be and is in fact your income tax return for 1942, is it not? A. Yes, sir.

Q. Calling your attention to an item of \$29,009.80. A. Yes.

Q. Do you know what that represents?

A. I imagine that is tax that I was subject to. Other than that, no.

Q. That is not called a tax. That is on item line 10, shows income.

A. Yes. Oh, I see, I see.

Q. What would you say?

A. That was what I—that was what my note was for, [121] I believe.

Q. Would you say that that item of \$29,009.80 is or is not the amount of the income of the Trepte

(Testimony of Albert Eugene Trepte.)

Construction Co. for 1942 attributed to you under the terms of the agreement of January 1, 1942, which is in evidence?

A. I believe that is what it is.

Q. And that shows a tax liability of \$12,413.21, does it not? A. Yes.

Mr. Pigg: I offer this return in evidence, your Honor, as Respondent's Exhibit I.

The Court: Any objection?

Mr. Stone: None.

The Court: Respondent's Exhibit I is admitted in evidence.

(The document above-referred to was received in evidence and marked Respondent's Exhibit I.)

By Mr. Pigg:

Q. I will save time. This, Mr. Trepte, is the return for 1943, is it not, bears your signature?

A. Yes, it does.

Q. And is your return for 1943? A. Yes.

Q. And that contains one item on line 9 of \$23,058.26. Is it or is it not a fact, if you know, that that represents [122] an item corresponding to the one mentioned on the 1942 return, so far as the Trepte Construction Co. is concerned?

A. I don't understand your question.

Q. Let me withdraw that. Would you say that that item represents the amount of income from Trepte Construction Co. for 1943 attributed to you?

A. To me, yes.

Q. Under the terms of the agreement of Janu-

(Testimony of Albert Eugene Trepte.)

ary 1, 1942? A. Yes.

Mr. Pigg: I offer this in evidence as Respondent's Exhibit J.

Mr. Stone: No objection.

The Court: Respondent's Exhibit J is admitted in evidence.

(The document above-referred to was received in evidence and marked Respondent's Exhibit J.)

By Mr. Pigg:

Q. Mr. Trepte, referring particularly to paragraph 21 of the stipulation of facts in this case, assuming that stipulation, particularly that paragraph, shows checks in these amounts and dates issued by the Trepte Construction Co., March 15, 1943, \$3,103.30, June 20, 1943. \$3,103.30; September 13, 1943, \$3,103.31 and December 10, 1943, \$3,103.30, and assuming that those items aggregate \$12,413.21 and that is the same amount as shown as tax due on the 1941 return, would you [123] say that those were the amounts of checks issued to you to pay the tax shown on your 1943 return?

A. Yes.

Q. Assuming that the same stipulation of facts shows a check issued and charged to your Withdrawal Account on March 13, 1944, for \$2,247.29, and that that is the same amount as is shown as the tax due on the 1943 return, Exhibit J, would you say that was the check issued in payment of that particular item of tax? A. Yes.

Q. Now, as to any and all other checks or items

(Testimony of Albert Eugene Trepte.)

shown in that stipulation, that paragraph, as identified, as being issued to the Collector of Internal Revenue, would you say that is or is not a fact, that those similar items were issued in payment of tax shown in a return made by you, an income tax return made by you? A. Yes.

Q. For some other year after or later?

A. Yes.

Q. Was your only source of income since 1942 the Trepte Construction Co.?

A. Yes, and the Navy.

Q. What amounts were attributed to you under the— A. Government.

Q. Excepting the Navy, we are talking about amounts [124] attributed to you under the terms of the agreement of January 1, 1942, were your only source of income since that date.

A. Yes.

Mr. Stone: If the court please, I believe that is a misstatement of the question, because he has already testified in 1942 he received salary for work on the Ryan building.

By Mr. Pigg:

Q. How much was that?

A. On the Ryan?

Q. Yes.

A. I know I was paid about, I know it was something like \$35.00 a week.

Q. For how long a period?

A. During the summer months between the spring and fall.

(Testimony of Albert Eugene Trepte.)

Q. And that was for what year? A. 1942.

Q. You will note in Exhibit I which is your 1942 return, there is a reference to an item of \$286.21. Is that or is that not the salary to which you have just referred as for the Rohr contract?

A. The Ryan.

Q. Ryan? A. Yes. [125]

Mr. Pigg: I think that is all.

The Court: Any further examination of this witness?

Mr. Stone: We would like to ask that he be excused from further attendance to go home to start to school tomorrow. Any objection?

Mr. Pigg: I don't have.

The Court: Have you finished with him?

Mr. Stone: We are through, yes.

Mr. Pigg: That is agreeable, your Honor.

The Court: This witness is excused from further attendance in this case.

(Witness excused.)

Mr. Stone: I will call Mrs. Trepte.

Whereupon,

MARGARET TREPTE,

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you tell us your name, please?

The Witness: Margaret Trepte.

(Testimony of Margaret Trepte.)

Direct Examination

By Mr. Stone:

Q. You are the wife of Walter Trepte?

A. Yes.

Q. And one of the partners of the Trepte Construction [126] Co.? A. Yes.

Q. When were you married to Walter Trepte?

A. In 1916.

Q. What was he doing for a business at that time? A. Working for his father.

Q. Was he a partner or just an employee?

A. No, just an employee.

Q. In what kind of work?

A. Oh, all kinds, pertaining to the construction business.

Q. What property did he own at the time you were married?

A. He didn't have anything.

Q. And you have lived together as husband and wife ever since that time? A. Yes.

Q. And whatever he has earned since that time you claim as community property? A. Yes.

Q. Do you remember the occasion of the discussions in regard to making a partnership and taking the boys in with Mr. Trepte? A. Yes.

Q. Do you know where that occurred? [127]

A. Well, at home we talked about it for quite awhile.

Q. When was that?

A. Well, it was in 1941, 1940. He talked about it a good deal as the boys grew up.

(Testimony of Margaret Trepte.)

Q. And you executed the partnership agreement dated January 1st, 1942, as one of the partners, did you? A. Yes.

Q. Did you know at that time that you were giving up nearly half of your community interest?

Mr. Pigg: I object to that. It calls for the conclusion.

The Court: Read the question to me, please.

(The question was read.)

The Court: Objection overruled.

The Witness: Yes.

Mr. Pigg: Exception.

The Court: Exception allowed.

By Mr. Stone:

Q. Did you favor making the partnership?

A. Definitely.

Q. Why?

A. Well, my husband was flying a good deal, and if anything should happen there would be somebody to carry on, and then I wanted it that way.

Q. Had the boys ever expressed any preference or [128] request for that kind of work?

A. Yes.

Q. In discussing the formation of the partnership, was there any discussion about its reducing taxes? A. No.

Q. Was there any mention of the precedent of Mr. Trepte and his father and their partnership?

A. Yes.

The Court: If you wish a record here, Mr.

(Testimony of Margaret Trepte.)

Counsel, you better have your witness keep her voice up.

Mr. Stone: I didn't hear the answer. Was there an answer?

The Witness: Yes.

By Mr. Stone:

Q. The reporter has to take it down and can't get the nod of your head. Before the partnership agreement of January 1st, 1942, was made, you read it, did you? A. Yes, I did.

Q. You knew what it contained? A. Yes.

Q. And signed it? A. Yes.

Q. Did you know that it had a provision for any of the partners to sell their interest to someone else? A. Yes. [129]

Q. And that Walter Trepte was made the manager of the business? A. Yes.

Q. And that the dealings under that partnership are controlled by the majority of the holdings of the partners? A. Yes.

Q. These other partners, Walter B. Trepte and Eugene Trepte are your sons?

A. Yes, they are.

Q. How long had Eugene talked and planned going into the construction business with his father?

A. Oh, all of his life, ever since he has grown up that is all he has wanted or talked about.

Q. Has he shown any particular interest in the business? A. Oh, sure.

Q. What?

(Testimony of Margaret Trepte.)

A. Well, he would work in the summer time, and when he is home on vacation goes down to the office or he is home at work looking over the books or would take trips with his father around the jobs.

Mr. Stone: I think that is all.

The Court: Read that answer for me, please.

(The answer was read.) [130]

Cross Examination

By Mr. Pigg:

Q. Do you know why your husband, Walter Trepte, was made manager of the business under the terms of the agreement of January 1, 1942?

A. Well, of course the business belonged to him when the business was started. He had always been the head of it.

Q. He was the only one among the four of you at that time who had the necessary education, training and skill, technical and otherwise?

A. Yes.

Q. To carry on the business of the type and character in which he was then engaged.

A. Yes.

Q. In what respect does that differ, if at all, since January 1, 1942, as compared to prior to that time?

A. Well, now the boys help him.

Q. The boys help him since when?

A. Well, you know Walter, since he has been working, since about 1935.

(Testimony of Margaret Trepte.)

Q. Then he helped him before January 1, 1942?

A. Yes.

Q. As well as afterwards?

A. Yes, but he was learning the business. [131]

Q. And he was paid a salary of \$35 to \$55 or so a week prior to January 1, 1942, wasn't he?

A. Yes.

Q. And he continued to receive the same amount or approximately the same amount week after week and month after month after January 1, 1942, didn't he?

A. Yes.

Q. What did Walter B. Trepte, your elder son, do in the way of helping his father after January 1, 1942, that he had not done before that date?

A. Well he did—of course, he was a little bit more skilled at that time in the business.

Q. At what time now are you referring to?

A. Well, than when he started in.

Q. In other words, he was more experienced on January 1, 1942, than he was in 1935?

A. Absolutely.

Q. And correspondingly I suppose the same thing would be true as of this date?

A. Yes.

Q. Using as your relative date, January 1, 1942?

A. Yes.

Q. Who actually prepared the written agreement or contract of January 1, 1942, do you know, Mrs. Trepte?

A. Beg pardon? [132]

Q. Who actually prepared the written agreement of January 1, 1942? Do you know who did that, who prepared that, the contract or agreement, written agreement?

(Testimony of Margaret Trepte.)

A. Well, I guess he did, we all did.

Q. Who prepared it, who drafted it?

A. The attorney.

Q. What attorney? A. Mr. Stone.

Q. Mr. Stone. And was Mr. Stone present at your discussions then, the preliminary discussions that led up to the signing of it? A. No.

Q. None of them?

A. No, not when I was there.

Q. Which ones were you at?

A. Well, we discussed it, my husband and I discussed it, more at the house out there.

Q. You didn't take part in the discussions at the office then?

A. I did in some of them but—

Q. Just happened to drop in on those occasions?

A. Well, I don't just remember that part.

Q. It is a fact, isn't it, that you left the whole matter to your husband's best judgment?

A. Yes, absolutely. [133]

Q. Whatever he decided and concluded was best to do, was all right with you, wasn't it?

A. Yes.

Q. You didn't actually study the terms of the agreement of January 1, 1942, for the purpose of determining whether you should or should not sign it, did you?

A. No, but I read it very thoroughly.

Q. You relied entirely on your husband's judgment about what was the best to be done?

A. Yes.

Mr. Pigg: That is all.

(Testimony of Margaret Trepte.)

Redirect Examination

By Mr. Stone:

Q. Were you at all influenced by what you wanted done for the boys?

A. No, not a bit, because we were in agreement about it, both wanted the same thing.

Mr. Stone: That is all.

Mr. Pigg: That is all.

The Court: Call your next witness.

(Witness excused.)

Mr. Stone: Mr. Walter Trepte.

Thereupon,

WALTER TREPTE,

called as a witness for and on behalf of the petitioners, having been first duly sworn, was examined and testified as follows: [134]

The Clerk: Tell us your name, please.

The Witness: Walter Trepte.

The Clerk: No middle initial?

The Witness: No.

Direct Examination

By Mr. Stone:

Q. How old are you? A. 54.

Q. What is your business?

A. General contractor.

Q. How long have you been engaged in that business?

A. Since—in the contracting business?

Q. Yes. A. Since 1917.

(Testimony of Walter Trepte.)

Q. And what were you engaged in before 1917?

A. In various crafts, working at the various crafts in the contracting industry.

Q. Who did you work for before 1917?

A. My father. [135]

Q. What was his name?

A. Morris Trepte.

Q. In San Diego? A. In San Diego.

Q. What change was made in 1917?

A. I became a partner with my father.

Q. And did he give you the interest or did you buy it or how did you acquire it?

A. I gave him a note for it, for the interest.

Q. Was the note paid? A. Yes.

Q. How, what funds?

A. Out of earnings. The note was—my father—may I—

Q. Yes.

A. My father had previously had a partner by the name of Ed Rambo, and I bought out his interest.

Q. Before you went to work as a partner with your father, what schooling did you have?

A. Two years of structural design, California School of Mechanical Arts, San Francisco.

Q. When did you obtain that schooling?

A. From 1910 to 1912.

Q. Then from 1912 on to 1917 was entirely spent working with your father? [136]

A. That is right.

Q. And for how long did your partnership with your father continue?

(Testimony of Walter Trepte.)

A. I don't—I think it was some—I think until 1928.

Q. And what arrangement—did he retire from the business?

A. I bought him out. I bought out his interest.

Q. Did you pay for that in cash or by a note?

A. In cash.

Q. From 1928 to 1942, was there anyone else associated with you in the business? A. No.

Q. What kind of construction work did you do largely in that period?

A. What is known as commercial construction and some engineering construction, road work and bridges.

Q. In this construction work, did your particular architectural engineering education give you any real assistance? A. Definitely.

Q. How?

A. Well, enabled me to grasp the fundamentals much faster than if I had not had that training.

Q. Were you able to do the engineering yourself on [137] some jobs that others would have to have architects for? A. That is right.

Q. Did you urge or guide your sons as to their education as they grew up?

A. Well, of course I hoped that they would join in our business. I influenced them all I could.

Q. And particularly as to the schooling that they should have? A. Yes.

Q. For instance, Gene's California Polytechnic School, did you discuss that with him before he

(Testimony of Walter Trepte.)

went there? A. Yes.

Q. Did you investigate it? A. Yes.

Q. Did you recommend it? A. Yes.

Q. Why?

A. Well, I had taken it up with the president of the San Diego State College who I thought was good, was an authority on schools, and he recommended that for a short term course that Cal. Poly. was the best that they had.

Q. Why did you form the Trepte Construction Company?

A. Well, I—firstly, because of the dangerous flying that we had to do to get to these off-shore Navy jobs; secondly, because of the business background; I had gone in [138] with my father and I felt that it was a good thing for my sons to do likewise.

Q. Was there any particular trip to San Clemente after which the question of partnership was discussed with anyone?

A. Well, one of the earlier trips that Mr. Golden and I took, we had a near crash in landing in a fog, and we discussed the question of what would become of this particular fixed fee contract we had with the Navy in the event of one or both of our deaths, so I told Mr. Golden that I had been considering having the boys go in partnership with me, and that I thought we should get one formed as soon as we could to carry on the business if anything happened to us.

Q. Was anything along that same line suggested to you by any of the government officers?

(Testimony of Walter Trepte.)

A. Well, one thing, Montgomery happened to—either Montgomery or Smith, I think, I was riding in the plane to and from there and they agreed that it would be very involved if anything like that happened, an accident.

Q. Do you know Mr. Smith's first name?

A. Henry Smith, Henry B. I think it is.

Q. Did you go frequently to San Clemente?

A. Yes, I went about once a week.

Q. How did they travel, what course to get there?

A. Well, they traveled north to Oceanside and to the control station and then westerly to San Clemente Island. [139]

Q. When was this occasion that you were speaking about when you were in the plane discussing the family partnership?

A. Well, it must have been the summer of 1941. We started the job in the summer of 1941. It must have been shortly after that.

Q. What contract was this San Clemente job under? A. Well, that is NOY-4025.

Q. With what department of the government?

A. The Bureau of Public Works, the United States Navy.

Q. Where was the work located that was done under that government contract?

A. All of the work?

Q. Yes.

A. Well, the original contract was for work, some \$2,700 worth of work. Most of that was on

(Testimony of Walter Trepte.)

North Island, which is in San Diego Bay, and that last work on that was completed, or that portion of the contract had to be completed roughly in a year's time. After that the contract was extended to include the Brown Field facilities of the lower end of San Diego Bay, the Otay Mesa Airfield facilities and Kearney Mesa Airfield facility and the San Clemente Island Airport facility. [140]

Q. All in that same contract?

A. That is right.

Q. How was the compensation paid under the contract, what compensation?

A. It was paid as a fixed fee, on a fixed fee basis that was determined by the officer in charge.

Q. What was the original fee on the original part of the contract?

A. Somewhere in the neighborhood of 3 percent, as I remember it.

Q. How was that paid to you, what kind of installments and where from?

A. Well, it was paid from the Bureau of Public Works at Washington — Bureau of Yards and Docks in Washington. I don't know whether it was — I can't say whether there was any definite or fixed intervals or not. It was paid in at—in installments, but the final, of course, count was not determined until the termination of the contract.

Q. Was that paid in separate checks or remittances from the payments that were made to you for the work as it progressed, meaning for the material and labor, was that paid you too under

(Testimony of Walter Trepte.)

the contract? A. Yes.

Q. They were paid separately, were they not?

A. Yes. [141]

Q. How did you collect your money on the payments for the labor and materials you put into it, weekly or monthly?

A. Well, I think it started monthly, and then as the job became larger I think it was bi-monthly, and it may have gotten down to weekly toward the last.

Q. What did you have to send to the government to get those payments?

A. The paid bills and the cancelled checks.

Q. How much did that contract eventually run into in dollars?

A. I believe it was between twenty-one and twenty-two million.

Q. Was the fee after this first two million of progress or what ever it was that you said was a little over 3 percent, was it the same rate of fixed fee after that for the rest of the contract?

A. No, we had—the Bureau of Yards and Docks determined that. We were told what we were to receive and we took it.

Q. Was it 3 percent?

A. No, I believe it was less than that, it averaged less than that.

Q. The last part of it got less and less, did it?

A. Yes, as the contract became larger the fee became [142] smaller.

Q. Well now, after your talk with Mr. Golden,

(Testimony of Walter Trepte.)

did you have further discussion with your family in regard to a partnership? A. Yes.

Q. And where and when?

A. Well, it was before—it was the fall of 1941, and of course we discussed it at home between the four of us.

Q. Were the boys questioned about their wanting to step into the business as partners?

A. Yes.

Q. And they wanted to?

A. Yes. I explained to them what an advantage it was to be taken in as a partner, because I had had the experience myself and found what a big advantage it was to take over a reputation for ability and integrity that you don't have to sweat for yourself, and they were able to see that and to appreciate it.

Q. You had reference to your experience with your father, taking over his—

A. That is right.

Q. Was there any discussion among you about making the partnership for the purpose of avoiding or reducing taxes?

A. No, I don't think taxes were mentioned. They were [143] a very minor thing then.

Q. And the war had not come on at that time?

A. No.

Q. Why did you make the notes 3 percent interest?

A. As I remember—I don't remember why, for what definite reason.

(Testimony of Walter Trepte.)

Q. Would you know why you didn't make it 6 percent?

A. Well, I wouldn't want to stick the boys.

Q. Now, at the time that partnership agreement was made, was Walter B. Trepte sufficiently educated in the business to take responsibility?

A. Yes.

Q. And what kind of responsibility could you give him?

A. He could take care of any of the office or accounting or hiring or personnel end of the work. He had an enlarged heart so he could not work out on the job the way Gene and I had worked.

Q. Do you think it is necessary for the boys, to have the proper education, to work in the dirty work of the business?

A. Well, I do to some extent, not as much as my father did.

Q. What is Walter B.'s position in the partnership now, what is his work?

A. Well, I would say he was assistant manager, assistant to me. [144]

Q. When you are gone he has the responsibility?

A. That is right. I was gone a considerable time this summer and he was—took my place, with a considerable amount of work on hand.

Q. You were doing considerable work during the summer?

A. As much as we were doing during the war or more.

(Testimony of Walter Trepte.)

Q. But for other than government?

A. Yes, I don't believe there were any government contracts this summer.

Q. In the partnership agreement among the items assigned to the partnership was this item: Naval air station job equity, \$88,458.88. What did that \$88,000 of the naval air station job equity consist of?

A. Well, working capital and the money owed us for labor and materials.

Q. None of that would be the profits of the job?

A. No.

Mr. Pigg: Your Honor, I have refrained from objecting for so long. I wish counsel would be instructed not to continue to lead his witness. This witness is an intelligent witness and does not need to be led. Let him testify, please.

The Court: I tell counsel quite often exactly in the same proportion that a witness is led his testimony must logically be discounted. [145]

By Mr. Stone:

Q. Do you have any other assets of your own other than those that you assigned to the partnership?

A. Yes.

Q. What character and what do they consist of?

A. Well, they were real estate and securities, liberty or government bonds.

Q. How long had Walter B. Trepte been working for you before the partnership was entered into?

A. Well, off and on since 1935.

Q. At the time the partnership was made, what

(Testimony of Walter Trepte.)

authority did he have in regard to the business, your business?

A. At the time it was, before?

Q. Yes, just at the time the partnership was made, yes?

A. Well, at that time he was—I would consider him as personnel, personnel man for our organization.

Q. Did he have any authority to sign checks?

A. Oh, yes.

Q. Did he sign any? A. Yes.

Q. After the partnership was made, was there any adjustment made by the partners as to a drawing account to equalize the different earning capacity of the partners?

A. Will you repeat that?

Mr. Stone: Read it please.

(The question was read.) [146]

The Witness: Yes.

By Mr. Stone:

Q. What was that?

A. The amounts, I couldn't give that.

Q. The amount that Walter drew, Walter B. Trepte drew, you would not know?

A. Well, it was around forty-eight hundred or five thousand a year.

Q. And how much did you draw?

A. Twenty, with the exception of one year when, I think it was 1944, when my business was slow, I think I drew ten.

Q. You mean ten hundred?

(Testimony of Walter Trepte.)

A. Ten thousand.

Q. And other years how much?

A. Twenty.

The Court: Meaning twenty thousand.

The Witness: Pardon me. Twenty thousand.

By Mr. Stone:

Q. And were those salary amounts deducted before figuring the profits that were divided between the partners? A. Yes.

Q. After the partnership was formed, did the boys have any right or exercise any right to draw any of the partnership funds for their own use?

A. Yes.

Q. And did they draw it? A. Yes.

Q. At the time the partnership was made had Gene, that is Albert Eugene Trepte, shown any aptitude for the construction business?

A. Yes.

Q. In what way could you see it?

A. Well, he had a natural ability to handle men and he had an interest in the engineering end of the business. I thought that he had exceptional ability as far as getting people and being able to—to get business, which is a big factor in the work.

Q. Since the partnership is made, has he taken any active part with you in the planning or management or operation of the business, other than these summers that he worked?

A. Well, he has shown a definite interest in what jobs we were doing and what the costs of the jobs were, how efficiently they were operated

(Testimony of Walter Trepte.)

and he has always shown an interest in the number of jobs we had, where they were and how they were progressing.

Q. Do you know of his ever going to any of those jobs to check up on them when he was not with you? A. Yes. [148]

Q. Have his questions afterward when you say he was there indicated why he went there?

A. Well, to enlighten himself.

Q. Has he been on the jobs with you any times?

A. Yes.

Q. Take any part in any discussion with you as to the character of the job, how it would be handled and carried out? A. Yes.

Q. I show you Exhibit 6. Is that your signature? A. Yes.

Q. And your wife's, Margaret Trepte's signature? A. Yes.

Q. Since that was executed on April 18, 1942 have you ever collected or used any part of Gene's earnings?

A. Well, repeat that. I didn't get that.

Mr. Stone: Will you read it Mr. Reporter?

(The question was read.)

The Witness: No.

By Mr. Stone:

Q. Or have you paid for his expenses, school expenses or any other expense?

A. No, the partnership did.

Q. Out of his part, was that?

A. Out of his part.

(Testimony of Walter Trepte.)

Q. How was the transition made from your individual [149] business of December 1941 to the partnership in January 1942? Was it a sudden change-over or was it gradual?

A. Well, I would say it was gradual. I was out of the home office most of that time, due to the fact that the Navy required me, this fixed fee contract, that I and Mr. Golden gave our individual—our own time to it, practically undivided. The change was probably gradual.

Q. Did you immediately print new stationery?

A. I don't believe so.

Q. Did you immediately print new checks?

A. No.

Q. What did you do?

A. Well, we have had stamps made and with the—we used to put these stamps that were all ready, or these checks and letterheads that were already printed, over stamped it with the Trepte Construction Company.

Q. You have another child, have you not, other than these two boys? A. Yes, a daughter.

Q. Was she considered at all in talking of this partnership? A. No.

Q. Why not?

A. Well, she could not—I didn't feel that she could lend any benefit to the partnership. [150]

Q. You have referred to the naval air station job, NOY-4025. Were there other government jobs that you were doing between 1940 and the end of the war? A. Yes, considerable.

(Testimony of Walter Trepte.)

Q. What were they?

A. Well, the first one was the fuel depot job, Navy fuel depot job at San Diego. The second one was a Defense Plant Job at Rohr Aircraft Company in Chula Vista. Then there was a sea water tunnel job that I think had governmental backing, I am not sure, for the San Diego Gas and Electric Company. Then we did several jobs for the Ryan Aeronautical Company, and I believe the Navy paid for one and the DPC paid for the other one.

Q. And what size were these jobs, the water tunnel for instance?

A. I think it was around three hundred thousand.

Q. And the Navy fuel depot?

A. \$750,000.

Q. And the Rohr Defense Plant Job?

A. Close to a million dollars.

Q. And Ryan?

A. Close to a million dollars.

Q. Those were taken under what names, those contracts?

A. Well, the Ryan jobs were under Trepte Construction Company. The fuel job and tunnel and the one for the Rohr [151] Aircraft Job were Golden Trepte Construction.

Q. On or about January 1, 1942 how large an organization did you have in your business, how many employees?

A. Oh, I would say around between 75 and 100.

Q. In the naval air station work of Golden & Trepte, how many were employed at that time?

(Testimony of Walter Trepte.)

A. I think the peak was 1500 men.

Q. Did Walter B. have any additional responsibility in connection with the naval air station job?

A. Yes.

Q. What was his share?

A. Well, he was—first he was with the time-keeping department, then he was assistant personnel man, and then he was equipment manager towards the last at the end of the contract, when we were having these hurdles at the job, and immediately had to get a very large amount of equipment, particularly rented equipment, and all of that he supervised as a representative.

The Court: We are now past 5:00 o'clock, gentlemen. We will be recessed until tomorrow morning at 10:00 o'clock.

(Whereupon, at 5:10 o'clock p.m., an adjournment was taken until 10:00 o'clock a.m., Tuesday, December 2, 1947.) [152]

Los Angeles, Dec. 2, 1947—10:05 a.m.

PROCEEDINGS

The Court: Proceed with the case on trial.

Whereupon,

WALTER TREPTE,

called as a witness for and on behalf of the Petitioners, having been previously duly sworn, resumed the stand and testified further as follows:

(Testimony of Walter Trepte.)

Direct Examination—(Continued)

By Mr. Stone:

Q. Mr. Trepte, when was the Defense Plant Corporation contract for the Rohr building that you mentioned entered into?

A. In the summer of 1942.

Q. Is your partnership, the Trepte Construction Company, still continuing as a going partnership?

A. Yes.

Q. Any plans of change of it in the future?

A. No.

Mr. Stone: That is all. You may cross examine.

Cross Examination

By Mr. Pigg:

Q. Mr. Trepte, concerning your employment and your partnership with your father in previous years as you have described it, what kind of business did you say that was?

A. The same business, construction business.

Q. The same business you have been in since about 19—well, since a long time prior to 1917?

A. He started the business in San Diego in 1895.

Q. That is, doing commercial contracting and engineering contracting?

A. That is right.

Q. What is the difference between the two?

A. Well, the building construction is commercial buildings in particular, building factories and warehouses. Engineering contracting is usually composed of road work, bridges, waterfront work.

Q. In every case it requires, for the purpose

(Testimony of Walter Trepte.)

of submitting bids to the person or the company or the government or otherwise, requires a knowledge of and skill in engineering and construction engineering, materials and labor markets, and prices and things of that kind?

A. That is right.

Q. What was the gentleman's name that you mentioned as having been a partner with your father prior to the time you became a partner?

A. Edward L. Rambo.

Q. I believe you said you bought his interest in 1917?

A. Well, I gave my father a note for his half of the business.

Q. You gave your father a note for whose half of the [157] business?

A. Well, for the other half that I took.

Q. What became of Rambo?

A. Well, he was I suppose reimbursed out of the money that my father must have bought him out and then taken my note for his half.

Q. Now, you said you bought Mr. Rambo's interest in your father's business at that time, didn't you?

A. Well, that is actually what happened. He left the business and I came in his place. I had been working as a superintendent for my father and for Rambo.

Q. In 1917 approximately how old were you?

A. I was 24.

(Testimony of Walter Trepte.)

Q. And how long prior to that time had you been working for your father in that business?

A. Well, since 1915. I ranched in the Imperial Valley for two years on some property my father owned.

Q. Was that for two or three years before 1917?

A. Yes.

Q. You were familiar with the transaction by which you became as you said a partner with your father at that time, weren't you? You knew how the transaction was consummated?

A. Well, yes.

Q. All right now, but what happened to Mr. Rambo? Did he take his—was there a division of the partnership [158] assets at that time, did he take his out separately?

A. I think he did. There was very little partnership property at the time.

Q. What did it consist of?

A. A small amount of equipment and a small amount of working capital.

Q. He could not have taken the equipment, could he, Mr. Trepte?

A. No.

Q. Then how did he take his interest or share out, if he did?

A. Well, my father must have given him a check.

Q. But you don't know?

A. No, I don't know.

Q. You don't really know how you acquired your interest as a partner in the business, do you?

(Testimony of Walter Trepte.)

A. Except that I did sign a note for what my father figured was the value of the business.

Q. Are there any books or records in existence now that would throw any light on the truth or accuracy of the testimony you have given concerning that transaction.

A. I don't know. I couldn't say definitely. I think there are, but I don't know.

Q. What and where are they?

A. If there are any such records I imagine my father has [159] them.

Q. Your father is still living?

A. That is right.

Q. At all events they are not in the courtroom?

A. What is that?

Q. At all events they are not in the courtroom?

A. No, that is right.

Q. Now, in 1928 I believe you said you bought your father's interest in the business for cash, didn't you?

A. Well, there was a cash—there was a division of property and then a cash adjustment. We naturally accumulated some real estate in our business transactions. He took some of it that way rather the real estate was divided and then an adjustment was made in cash. He took the bulk of the real estate, as I remember it.

Q. You mean that your father just withdrew from the business at that time and took a portion of the assets representing his agreed interest?

A. That is right.

(Testimony of Walter Trepte.)

Q. To whom did you make payment of cash as a result of the 1917 transaction, that is in payment of the note or otherwise?

A. Well, the note must have—I am quite sure I gave it to my father.

Q. You don't remember. Do you remember how much the [160] note was for?

A. No, I don't remember exactly.

Q. Your memory is very vague on that, isn't it?

A. Yes, it has been a long time.

Q. Prior to January 1, 1942 I believe you said that your own business, that is the business Walter Trepte Builders, had about 75 to 100 employees?

A. I would say so.

Q. Can you classify those employees as to the respective skills as between laborers and those who had either special training or abilities, and the approximate number?

A. Well, usually the skills—by skill you mean the foreman and supervisors?

Q. Yes, something like that.

A. Well, they usually constitute from 10 to 20 percent, depending on the type of work we are doing.

Q. Was the business divided up into departments, rather than one foreman did you have a department head or something like that responsible for any particular phase of the work, accomplishment or any particular part of the work or job?

A. Yes, there was always a superintendent for each job.

(Testimony of Walter Trepte.)

Q. And if you were working on two or more jobs, you would have superintendents for each job, wouldn't you?

A. Well, on a large one, yes, but if there were [161] several jobs that one superintendent could handle that he was dividing, he would handle three or four jobs or two jobs.

Q. Then the superintendent would have certain subordinates, that is, more or less technical men who would be charged with responsibility for the work of the laborers or the men that did the actual work?

A. That is right.

Q. Now these superintendents or the superintendent, as the case might be, they were responsible directly to you, were they not?

A. Yes.

Q. Worked under your supervision?

A. Yes.

Q. Under your direction?

A. Yes.

Q. You told them what to do and how to do it?

A. That is right.

Q. And that is equally true as to any work that either or both of your sons, Albert Eugene I believe and Walter B. did at that time, is it not?

A. Yes. It would be particularly true with Walter.

The Court: I am afraid that question doesn't mean much to me, Mr. Pigg. It is indefinite in my mind. If you want to show some facts, you better bring them out a little more definitely. I don't know what the witness means in response [162] to that question.

(Testimony of Walter Trepte.)

Mr. Pigg: Thank you, your Honor. I was turning over the same thing in my mind.

By Mr. Pigg:

Q. So far as Walter B. Trepte is concerned the work, the things he did or performed, as you have heretofore described—now let's rate this question up to including December 31, 1941—he did that work and performed those things under your supervision and direction, didn't he?

A. Yes.

Q. And that was likewise the situation, was the same after January 1, 1942 as theretofore?

A. For some time after that he took charge of the equipment of the North Island or NOY-4025 contract.

Q. When was that? When did he do that?

A. In 1942.

Q. And he took charge of what equipment?

A. All the grading equipment and trucks.

Q. You mean as far as maintenance?

A. Maintenance and rent and procural of equipment and the purchase of equipment.

Q. He did that under your supervision and at your direction, did he not? He consulted with you as to what he did?

A. Yes. [163]

Q. If he purchased any additional or new equipment he consulted you about it, did he not?

A. Well, there wasn't time on this particular job. His judgment was used a good deal.

Q. Well, if the equipment was any major item?

A. The officer in charge had to okay it, not I.

(Testimony of Walter Trepte.)

Q. You mean the naval?

A. The naval officer in charge, yes.

Q. Now as to Albert Eugene Trepte, I don't recall now, did he ever work for you prior to January 1, 1942?

A. Well, he worked in the summer of '41.

Q. Of what? A. Of '41.

Q. Whatever he did at that time he did under your supervision and direction, did he not?

A. That is right.

Q. Subject to your control? A. Yes.

Q. And in what respect, if at all, did that situation change so far as Albert Eugene is concerned after January 1, 1942? A. It didn't.

Q. Do you have the original of the government contract NOY-4025, Mr. Trepte? A. Yes.

Q. I hand you a document, Mr. Trepte, and ask you if that is the original of the contract, of the government contract, Navy Department contract number 4025, to which you have made reference?

A. Yes, it is.

Q. And is that signed on behalf of—first let me ask you what is the date of that contract, Mr. Trepte? A. July 6, 1940.

Q. And it was signed by whom on behalf of Walter B. Trepte Builder?

A. Walter Trepte.

Q. That is yourself? A. Yes, sir.

Q. And it was signed by whom on behalf of the government?

A. By the Secretary of the Navy. Is it Simpson?

(Testimony of Walter Trepte.)

Q. It looks something like that, Simpson. The signature is hard to read. Is that correct?

A. Yes.

Q. The signature is hard to read but it is signed as Acting Secretary of the Navy. That is sufficient, is it not? A. Yes.

Q. Now, will you look at this group of papers, Mr. Trepte, and tell me and tell the Court if this is an exact and true copy of the original contract which you have just [165] examined?

A. Yes, I would say it is.

Q. And it contains the same signatures, facsimilies—no, they are typed. Will you turn to the page—this signature you couldn't make out a while ago, looking at this copy does the name Louis Compton, does that explain— A. Yes.

Q. He was the government official who signed as Acting Secretary of the Navy? A. Yes.

Q. Do you say this is a true copy of the contract? A. Yes.

Mr. Pigg: I will offer this copy as Respondent's Exhibit K.

The Court: Any objection to this instrument?

Mr. Stone: No.

The Court: Respondent's Exhibit K is admitted in evidence.

(The document above-referred to was received in evidence and marked Respondent's Exhibit K.)

By Mr. Pigg:

Q. Now, Mr. Trepte, I will turn to Exhibit K. Was that a contract on which you acting as Walter

(Testimony of Walter Trepte.)

Trepte builder was engaged at that time as distinguished from the Golden & Trepte Construction Company, or is that a Golden & Trepte [166] Construction contract?

A. That is a joint venture formed by M. H. Golden contractor and Walter Trepte.

Q. Then you obtained this contract on the date that you have mentioned, on July 11, 1940, and was it on or after that date that you entered into the contract with—I mean the partnership arrangement with Mr. Golden?

A. Well, there must have been a partnership formed before the contract was signed.

Q. Mr. Golden didn't sign this contract, did he?

A. Yes.

Q. Did he? A. M. H. Golden.

Q. I see. This was a Golden & Trepte Construction Company contract?

A. Known as a joint venture, yes, for the purpose of handling this job.

Q. Was the Golden & Trepte Construction Company engaged on any other contract than this one at any time during the years 1940—let us say from the date of this contract until the close of the year 1943? A. Yes, sir.

Q. What other contract?

A. An addition to the Rohr Aircraft Plant in Chula Vista. The contract was with the DPC Corporation. [167]

Q. DPC, what does that mean?

A. Defense Plant Corporation.

(Testimony of Walter Trepte.)

Q. That is a government contract also?

A. Yes, sir.

Q. And do you have that contract in the court-room? A. Yes, I believe so.

Q. Mr. Trepte, there is a group of papers which purports to be a duplicate original, I believe it is a carbon copy bearing actual signatures. Is that the contract to which you have just referred?

A. Yes.

Q. And this is signed by whom on behalf of the contractors, that is Golden & Trepte?

A. Walter Trepte and M. H. Golden.

Q. What is the date of it?

A. June 30, 1942.

Q. Can you tell who signed on behalf of the government?

A. Fred H. Rohr, president of the Rohr Aircraft Company.

Q. But the cost and payments that were made under that contract were made by the Defense Plant Corporation?

A. Yes, the Rohr Aircraft were acting for and on behalf of the Defense Plant Corporation.

Q. When was the work on that contract begun and when was it completed? [168]

A. It must have been begun shortly, the day after the contract or the day the contract was signed. I don't know whether it was completed in 1942 or not.

Q. Was it completed in 1943? A. Yes.

Q. What was the amount, the approximate

(Testimony of Walter Trepte.)

amount of total payments under that contract, Mr. Trepte?

Mr. Stone: Page 2, Paragraph 2.

The Witness: The total amount is \$644,339.

By Mr. Pigg:

Q. That is the figure shown in the second paragraph of page two? A. That is right.

Q. Were there any additions or supplements to that to increase the payments?

A. I couldn't answer that. I think there were, however.

Q. Well, now, going back for a moment to the contract number 4025, the navy contract which is dated, I believe, July 11, 1940, when or approximately when was the work under that contract completed, including any additions or supplements and so forth?

A. I couldn't answer that definitely.

Q. Can you answer as to the year?

A. No, because it was dragged out. I think it was in the early part of 1944, however. [169]

Q. Not all completed, however, prior to December 31, 1943, is that correct?

A. I would say so.

Q. Now, what were the actual or approximate total payments made by the government under that contract? A. This one?

Q. 4025.

A. Approximate twenty-one million.

Q. Will you tell me if this group of papers is a true copy of the cost-plus fixed fee contract which you have identified as being dated—

(Testimony of Walter Trepte.)

A. June 30, 1942.

Q. June 30, 1942? A. Yes.

Q. It is? A. Yes.

Mr. Pigg: I would offer this copy of the contract as Respondent's Exhibit L. Is there any objection?

Mr. Stone: No objection.

The Court: Respondent's Exhibit L is admitted in evidence.

(The document above-referred to was received in evidence and marked Respondent's Exhibit L.)

By Mr. Pigg:

Q. Was the Golden & Trepte Construction Company [170] engaged on any other government contract during any part of the year 1942?

A. Yes, the fuel depot contract for the navy.

Q. How about 1943? A. How is that?

Q. How about the year 1943?

A. I don't believe there were any in the year 1943.

Q. Do you have the copy or the original of the fuel depot contract?

Mr. Stone: I din't have that. We were not able to find it. I think it was with Mr. Golden, and Mr. Walter Trepte was not able to find it.

By Mr. Pigg:

Q. What was it, a cost—

A. No, it was a lump sum.

Q. How much was the total payment under that contract?

(Testimony of Walter Trepte.)

A. In the neighborhood of—over seven hundred thousand dollars.

Q. What year, do you remember, was that contract completed? A. In 1942, I am quite sure.

Q. The Golden & Trepte Construction Company engaged on no other government contract in either 1942 or 1943 than the three you have mentioned?

A. Not on a government. They built water tunnels for [171] the San Diego Gas and Electric Company. Whether the government had any part of that I don't know. It may have been, but the contract was signed with the gas company.

Q. Did I correctly understand your testimony yesterday afternoon to be that it was your understanding that the Navy Department did pay the cost of that contract?

A. No, I said I thought the government had some interest in it, but we were paid by the gas company direct.

Q. Does that complete all the contracts, or were there others? A. No, I believe that is all.

Q. Now, was the Golden & Trepte Construction Company engaged on any similar construction contract for anyone other than the government during either of the years 1942 or 1943 other than as you have mentioned?

A. We might have done a contract for Rohr in addition. I am not positive whether I was doing work at the time for Rohr or Ryan and several other of my customers, and I don't know, I couldn't say whether Golden participated in those. He didn't

(Testimony of Walter Trepte.)

in any of the Ryan contracts. It was just a gesture of good will on my part. It was not necessary.

Q. Did you do some work for Mr. Rohr or Mr. Ryan as the Trepte Construction Company after January 1, 1942? A. Yes.

Q. To the extent that your testimony on direct [172] examination related to or referred to work done for either of those gentlemen, was that done, the work performed, by the Trepte Construction Company as distinguished from Golden & Trepte?

A. Yes, sir.

Q. Were those large contracts or relatively small compared to these two here, now represented by Exhibits K and L?

A. They were large, relatively the same size.

Q. They were private individual contracts, the government not interested in those, is that right?

A. Well, on the last job that we did for the Ryan Company, the navy paid for all of the improvements.

Q. That was the Ryan Aeronautical contract you mentioned yesterday afternoon?

A. Yes, sir.

Q. That was a navy contract?

A. Yes, that was one—well, we had a crew at Ryan's from 1939 I think until the end of the war, so this navy contract was the only one that the government paid us. Any of the rest of them the Ryan Aeronautical Company paid direct. The navy contract was about \$100,000.

Q. Lest we might forget now, as to the Golden-

(Testimony of Walter Trepte.)

Trepte Construction Company I believe you said yesterday that approximately as of January 1, 1942 they had approximately fifteen hundred employees. That is about right? [173]

A. I said that was the peak.

Q. When did you reach the peak?

A. I don't know whether the peak was in early—I think it was in early—right after December 7th, 1941.

Q. Not long after Pearl Harbor?

A. That is right.

Q. So far as the classification is, that is, the superintendents and the manner of performing the work on these contracts is concerned, and as to the number of employees and the superintendents and responsibilities of the employees and so forth, would your testimony be the same so far as the Trepte-Golden Construction Company is concerned as it was with respect to the first company, that is the Trepte Construction Company, about which you were questioned a little while ago?

A. Yes, sir.

Q. Mr. Trepte, I will hand you Petitioner's Exhibit 1 and call your attention particularly to page number 2 and to the last items under the heading of assets, and particularly to the item naval air station depot equity \$88,458.88. What relationship, if any, does that have to this contract number 4025?

A. Well, it was the working capital that was advanced to run the job out of our concern.

Q. That represents the working capital that

(Testimony of Walter Trepte.)

[174] Golden-Trepte at that time had put in?

A. Well, that is my share of it, not Mr. Golden's share. It varied.

Q. And those payments were made under that contract, I believe you said, two in a month, is that right?

A. Yes, sir.

Q. And depending on the dates on which progress reports or estimates as to percentage of completion were made or submitted to the contracting officer?

A. Well, in this particular case we paid the bills and got the receipts and they reimbursed us within ten days.

Q. Within ten days?

A. It was a fixed fee plus a net cost.

Q. So that the \$88,000 represented approximately the amount necessary to carry on under—

A. Yes, material and labor.

Q. For material and labor under that contract?

A. Yes, sir.

Q. Mr. Trepte, isn't it a fact that your son Walter B. Trepte has never shown any real interest in the business, that is, at least from its technical aspects, engineering features?

A. I wouldn't say that. He certainly shows an interest in the operation of the business. His inclination is toward the accounting and the office end of it and the equipment [175] end of the business.

Q. Has he ever studied engineering, structural engineering or otherwise?

A. Well, he took an economics course.

(Testimony of Walter Trepte.)

Q. Has he ever studied accountancy?

A. He must have been—he took an economics, started in an economics course at State College in San Diego.

Q. You say he must have. You don't know whether he did or not?

A. No, I couldn't say definitely.

Q. You heard his testimony yesterday as to the extent of his knowledge of bookkeeping, didn't you? A. Yes.

Q. Now, referring to your trips with Mr. Golden in the summer or fall of 1941, from where to where did you say those trips were made?

A. The trips were made from the airfield at North Island to the temporary landing strip at San Clemente Island, off the coast of San Diego County.

Q. What distance would you say?

A. Well, the airline distance would be about around 90 miles, but we flew probably 150 miles on the course to get there.

Q. Now, as I understand your testimony, the inference of it or the purport of it was that both you and Mr. Golden engaged in flying under these hazardous conditions, and you [176] discussed the possible extent to which your business was jeopardized by the chance of accident; is that generally what you meant? A. Yes.

Q. And that because of these hazards you were concerned as to what might happen to the fixed fee contracts on which you were then engaged?

A. That is right.

(Testimony of Walter Trepte.)

Q. What was the nature of that concern, Mr. Trepte?

A. Well, we were concerned as to protecting the assets of the company if a trustee or someone operated the contract, it might not have been satisfactory to the navy.

Q. In other words, you were concerned as to what might happen to the profit which had been made or might or was calculated to be earned under the contract?

A. And our reputation.

Q. And the welfare of the respective families?

A. Yes, and the reputation of the business. If the contract had been cancelled it would have reflected on—

Q. Your primary interest was to conserve your interest in those contracts for the benefit of your respective families, is that what you mean?

A. I would say so.

Q. To what extent, if at all, were you concerned as to what might happen as to the completion of those contracts if [177] anything should happen to either you or Mr. Golden?

A. Just as much as we were concerned about the family, for the contract called for completion of it.

Q. You realize, of course, if such a catastrophe should happen someone else would have to take over the contracts, don't you?

A. That is right, and both Mr. Golden and myself felt that our sons should take over.

Q. So that this family partnership arrangement is the device chosen by you as a means to carry into

(Testimony of Walter Trepte.)

effect your plans for the conservation of the family welfare?

A. And the carrying on of this job particularly.

Q. Well, you knew that Mr. Walter B. Trepte was not competent to carry on that contract in the event of your death, didn't you?

A. No, sir, I think he has—would have had the ability at that time. He has certainly showed himself to have the ability since then.

Q. What do you think as to the other son, Eugene Trepte, as of that date?

A. Well, I don't believe he could have carried—

Q. Had Walter B. Trepte ever prior to January 1, 1942 assembled the data necessary for the preparation and submission to the government or any person or concern any bid for construction work of the character you have described? [178]

A. This particular job?

Q. These jobs or any other similar construction work.

A. He had helped, yes.

Q. He helped. Who did he help?

A. He helped me and he helped our estimators.

Q. Your estimators are salaried employees, are they not?

A. Yes, sir.

The Court: As of what date are you directing that question?

Mr. Pigg: As of January 1, 1942, particularly, your Honor, immediately preceding that date.

The Court: Proceed. Was your answer given as to that date?

The Witness: Yes, sir. Yes, your Honor.

(Testimony of Walter Trepte.)

By Mr. Pigg:

Q. Now, relating the same question to any other time between January 1, 1942 and December 31, 1943, what would your answer be?

A. May I have the first question read?

The Court: I think you better make that more definite. I doubt whether the witness heard it. I am not sure that I did.

Mr. Pigg: I will withdraw that question and restate it. [179]

By Mr. Pigg:

Q. To what extent, if at all, during the period January 1, 1942 to December 31, 1943 had Walter B. Trepte assembled the data necessary to the preparation of bids for construction work of the type or nature we have been discussing here?

A. He assisted in the same manner. I was the final check.

Q. In other words, it was the same after January 1, 1942 as it had been theretofore?

A. Except that he was handling larger jobs than he had before, himself.

Q. Just how did this family partnership arrangement idea originate with you, Mr. Trepte?

A. Well, my wife and I had been talking about it for years previous. I had had the same sort of partnership with my father, and we had—my father was able to build up the good will and integrity of the business during the period that—prior to the time I was taken in as a partner and up to the time I bought him out. I might say that I kept the good will and the integrity of the business, and we felt

(Testimony of Walter Trepte.)

that it should be continued by taking in these sons that were able to become partners.

Q. In what way did you feel or believe that the integrity of the business was fortified by bringing in the two [180] sons in the manner in which they are shown to have been brought in?

A. Well, I can't say bringing in the sons would do so. I referred to the integrity and ability that my father and I had built up, good will, and I could expect my sons to do likewise, and I feel that they are having the same advantage that I had from my father's good will that had been built up.

Q. In other words, you want to pass that on to them?

A. That is right. I might say that we have built six or seven buildings for the same corporation, so there must have been a measure of good will built up, to have done that.

Q. Is it or is it not a fact that as of about that time, and referring particularly to a matter of six months or so before January 1, 1942, that you had heard of other similar arrangements that had been put into effect, family partnerships?

A. No, except the one that my father and I had.

Q. That is the only one you ever heard of?

A. No, no, but that was the background of it.

Q. You knew it was being done more as a general thing in this area or section of the country, did you not, Mr. Trepte?

A. No, sir.

Q. You knew it was frequently being done, didn't you?

A. Subconsciously, I suppose I did. [181].

(Testimony of Walter Trepte.)

Q. You also knew the tax effect of it, didn't you?

A. Well, in 1941 I don't believe there was a very large tax.

Q. Did you mean to testify on direct examination, yesterday afternoon, that you had never discussed the matter of forming a family partnership with any attorney or any accountant prior to the time that you decided to go through with the plan?

A. No, it was afterwards.

Q. You mean it was not until after you had made your decision that you talked or discussed that with any attorney or accountant?

A. That is right.

Q. You are positive of that? A. Yes.

Q. You are positive that you never discussed the tax angles or effect of such an arrangement with Mr. Essenhoff, what is his name, Carl Essenhoff?

A. Carl Essenhoff. He is our accountant.

Q. A CPA is he not? A. CPA, that is right.

Q. Who worked for you prior to January 1, 1942? A. Yes.

Q. And afterwards. When did you first consult an attorney about drawing up this partnership agreement, Mr. [182] Trepte?

A. Well, it must have been the latter part of 1941.

Q. Whom did you consult? A. Mr. Stone.

Q. When was the document actually drawn up and executed?

(Testimony of Walter Trepte.)

A. I couldn't say the exact date, but it was around the first of the year.

Q. Did you tell Mr. Stone the substance of the provisions you wanted incorporated in the agreement?

A. Yes. Mr. Stone had been my father's and my attorney prior to then. He handled the dissolution of our partnership in 1928.

Q. Did he have anything to do with the transaction by which you stated you bought the interest of Mr. Rambo, what is the name?

A. Rambo. No, sir.

Q. In 1917?

A. No, sir. There was no attorney. There were not enough assets to pay for an attorney.

Q. Now, on your suggestion that you didn't think the tax rates were very high late in 1941 or the beginning of 1942, you knew, did you not, Mr. Trepte, that there had been two revenue acts passed during the year 1940, one known as the first revenue act of 1940 and one as the second revenue [183] act of 1940?

A. I don't remember paying any particular attention to it.

Q. You knew that the tax rates were going up at that time, didn't you?

A. I suppose I did, yes.

Q. In work of the character you have described you would be reasonably familiar with the tax, the amount of tax that you would need to pay out of the earnings or profits of the operation, would you not?

A. From prvevious experience, yes.

(Testimony of Walter Trepte.)

Q. From previous experience?

A. Yes, certainly.

Q. Assuming that the first revenue act of 1940 was enacted on June 25, 1940 and that the second one was enacted on October 8, 1940, those are matters that normally would come to your attention and notice in the course of your business, are they not?

A. Yes, I think so.

Q. And assuming also that there was an excess profits amendment in 1941 and that the act did become law and was enacted on March 7, 1941, that is also a matter with which you would be reasonably familiar at that time, is not?

A. I suppose so.

Q. And assuming that there was considerable publicity [184] in the press and business circles in general as to the new revenue act, the war revenue act, which Congress then had under consideration that later became the revenue act of 1942, in the business that you were engaged would you have reason to be familiar and to have at least a speaking acquaintance with the possibilities of such an act?

A. Yes.

Q. The very proximity of the date of this partnership agreement to the Pearl Harbor date of December 7, 1941 would have served to impress those matters upon your mind, would it not, Mr. Trepte?

A. Well, it would also impress on my mind the need of having someone to carry on the business.

Q. You mean by that that it was your purpose

(Testimony of Walter Trepte.)

that your wife and two sons would carry on the business if anything happened to you?

A. That is right.

Q. You knew that none of them had been trained for such an undertaking at that time, didn't you?

A. No, sir, my oldest son was trained and he had the ability to carry on if he had to. As long as I was there to carry the ball he naturally could not take my place.

Q. Walter B. Trepte was paid a salary as such for what ever periods that he worked for you prior to January 1, 1942, was he not? [185]

A. Yes.

Q. So far as amounts withdarawn by him were concerned, after that date, for the next two years after that date, which were entered in the account captioned Walter B. Trepte, withdrawals, he continued to receive the same or substantially the same amounts per week and per month during the two years following January 1, 1942, is that right?

A. Yes. He had the authority to withdraw anything more that he wanted, though.

Q. How did he acquire that authority?

A. Well, from the consent of my wife and I and his brother.

Q. You mean you, your wife, and your other son did actually consent that he might do so?

A. That is right.

Q. Was that consent reduced to writing or just was it an oral understanding?

(Testimony of Walter Trepte.)

A. No, it was an oral understanding. It was a written understanding, though, as far as the bank was concerned. My wife and I had to—and my son had to sign the signature card at the bank, to give him authority to sign checks.

Q. I was just coming to that. So far as any checks, the company checks were signed by Walter B. Trepte, was his authority for the signing of the checks given in accordance with provisions of the agreement of January 1, 1942? [186]

A. Yes. The partnership agreement you refer to?

Q. Yes, the partnership agreement.

A. Yes.

Q. In other words, the majority interest partners authorized him to sign those checks?

A. Yes.

Q. And authorized the bank to honor—

A. His signature.

Q. His signature? A. Yes, sir.

Q. Was anyone else authorized to sign checks on behalf of the company?

A. At various times, yes, particularly on jobs when I was supposed to be away from the city of San Diego I would have to have another signature to carry the business on efficiently.

Q. What kind of work did you understand Mr. Stone to have reference to yesterday when he mentioned the dirty work in connection with the business which you have described?

A. Well, I imagine working with tools, with a shovel or a pick.

(Testimony of Walter Trepte.)

Q. Is that all pick and shovel work?

A. Or carpenter tools or cement finisher's tools or plasterer's tools.

Q. As distinguished from one competent to plan and [187] supervise the performance of such work, you understand? A. No, I don't.

Q. You mean the actual doing of those manual jobs as distinguished from a person qualified to supervise and plan the construction of such jobs?

A. I don't quite understand the answer you want.

Mr. Pigg: Well, it is not important. We can strike it. I believe that is all, your Honor.

Mr. Stone: I wonder if counsel would be willing to stipulate that the excess tax amendment that he referred to of March 7, 1941 applied only to corporations and not individuals.

The Court: That is a matter of law. I will take that, of course.

Mr. Stone: And the fact that the 1942 revenue act that he spoke of was passed October 21, 1942?

The Court: That is also a matter of law, of which I will take judicial notice.

Redirect Examination

By Mr. Stone:

Q. Was this navy contract on North Island made by you by a bid? A. No.

Q. How was it?

A. It was negotiated between the commandant of the [188] eleventh naval district together with the public works officer, to handle a given amount of construction work at North Island.

(Testimony of Walter Trepte.)

Q. Did you and Golden apply for the job, or did the government ask you to do it?

A. The government asked us.

Q. They picked you, then. A. Yes, sir.

Q. Mr. Pigg has asked you in regard to the activities of Walter B. Trepte in procuring equipment on the North Island job. Do you know of one occasion or more where he went out of the state to procure equipment?

A. Yes, one of the larger procurement jobs was to take over several hundred thousand dollars worth of equipment out of the CCC camps at that time in the state of Arizona. It was a transaction between the navy and the CCC authority.

Q. When was that done?

A. I think it was 1942.

Q. Who picked Walter B. Trepte to do that job? A. The officer in charge.

Q. And he did it satisfactorily?

A. Yes.

Q. What was the volume or value of the equipment that was purchased?

A. There were several hundred thousand dollars worth or more. [189]

Q. Mr. Pigg asked you in regard to your duties as the superintendent or the manager of the employees, on bids and various things. Were your duties as sole owner of the business before January 1, 1942 carried on the same as your duties as manager of the partnership after that? A. Yes.

Mr. Stone: That is all. No further examination.

(Testimony of Walter Trepte.)

The Court: Any further questions of this witness?

Mr. Pigg: I think that is all, your Honor.

The Court: I want to ask you one or two questions, to clear up one proposition that I do not think has been explained to me clearly. You have been asked a time or two, Mr. Witness, about your consideration of taxes or escape of taxes—I am not trying to use the same words that may have been used in forming this partnership arrangement, and your answer was in effect that taxes were not heavy then or something to that effect, I believe. Is that about what you answered?

The Witness: Yes.

The Court: Well, that does not exactly answer the question, it seems to me, if taxes are heavy or light, comparatively speaking. What I want to know is to what extent, if any, you took taxes into consideration in forming this partnership arrangement?

The Witness: We didn't take them into consideration. [190]

The Court: Were they ever discussed at all?

The Witness: Not until the—after it was formed and Mr. Essenhoff brought the matter up.

The Court: How long after it was formed was it before he brought the matter up?

The Witness: Well, when he came in the office I imagine in March to audit the books of the previous year.

The Court: March of what year?

(Testimony of Walter Trepte.)

The Witness: Of 1942.

The Court: State to what extent, if any, you took into consideration the matter of dividing up income by forming a partnership arrangement?

The Witness: Well, I don't think we considered it particularly. The main thing was to have the boys in the business, to carry on in the case of my death.

The Court: You say you don't think you considered it particularly. That is rather a general answer. Tell me more particularly about that, whether you did or did not.

The Witness: We did not.

The Court: That is all I wanted to ask.

Mr. Stone: The Petitioners rest.

The Court: The Petitioners rest. What has the Respondent?

Mr. Pigg: The Respondent rests, your Honor.

[Endorsed]: T.C.U.S. Filed Dec. 19, 1947. [191]

In the United States Court of Appeals for the
Ninth Circuit

Docket No. 12515

WALTER TREPTE,

Petitioner on Review,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent on Review.

Docket No. 12516

MARGARET TREPTE,

Petitioner on Review,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent on Review.

ORDER

Upon joint motion, it is ordered:

1. That a single consolidated transcript of record on review in the above-entitled proceeding shall be sufficient.
2. That these proceedings be and they are hereby consolidated for briefing, hearing, argument and decision.
3. That the original exhibits in the above-entitled causes, consisting of Petitioner's Exhibits 1 and 4 through 16 and 21, Respondent's Exhibits G through L, and Joint Exhibits 2-A, 3-B, 17-C, 18-D, 19-E and 20-F, instead of being fully set forth in the transcript to be certified by the Clerk of The Tax Court of the United States to the Clerk

of the [192] United States Court of Appeals for the Ninth Circuit, may be transmitted by the Clerk of the Tax Court to the Clerk of this Court, said exhibits, however, to remain in the custody of the Clerk of the Tax Court until fifteen days prior to the hearing before this Court and, upon direction and at the expense of counsel for petitioners, to be then transmitted by the Clerk of the Tax Court to the Clerk of this Court.

4. That said exhibits need not be printed in the record on review herein but may be referred to by counsel in their respective briefs and on oral argument, or reproduced, in whole or in part, in an appendix to their respective briefs, and considered by the Court with the same force and effect as if included in the printed record on review.

5. That the time within which to file the record on review in the above-entitled proceedings with this Court be, and the same is, extended to and including November 16, 1948.

6. That the Clerk of this Court transmit a certified copy of this order to the Clerk of The Tax Court of the United States to be by him incorporated in the transcript of record on review herein.

Done at Los Angeles, California, this 28th day of Sept., A. D., 1948.

ALBERT LEE STEPHENS,

U. S. Circuit Judge.

[Endorsed]: Filed Sept. 29, 1948. Paul P. O'Brien, Clerk.

A true copy. Attest: Sept. 29, 1948. Paul P. O'Brien, Clerk. (Seal.)

[Endorsed]: T.C.U.S. Filed Oct. 4, 1948. [193]

[Title of Causes Nos. 12515-16.]

DESIGNATION OF CONTENTS OF RECORD
ON REVIEW

To the Clerk of the Tax Court of the United States:

You will please prepare, transmit, and deliver to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, copies duly certified as correct of the following documents and records in the above-entitled causes in connection with the Petition for Review by the said Circuit Court of Appeals for the Ninth Circuit, heretofore filed by Walter Trepte and Margaret Trepte, the above-named petitioners:

1. The docket entries of all proceedings before the Tax Court of the United States.
2. Petitions (omitting Exhibits attached thereto).
3. Answers.
4. Memorandum, Findings of Fact and Opinion of the Tax Court promulgated May 28, 1948.
5. The Decision of the Tax Court entered on May 28, 1948.
6. Petition for Review filed on August 23, 1948.
7. Notice of filing Petition for Review filed on August 23, 1948.
- 7½. Stipulation of fact filed December 1, 1947.
8. From the official transcript of oral testimony:
 - (a) The testimony of Walter B. Trepte which appears [194] on pages from 31 to 65, inclusive;
 - (b) The testimony of Albert Eugene Trepte which appears on pages 65 to 79, inclusive;

(c) The testimony of Margaret Trepte which appears on pages 79 to 87, inclusive;

(d) The testimony of Walter Trepte which appears on pages 87 to 144, inclusive.

9. This Designation of Contents of Record of Review.

10. Notice of filing Designation of Contents of Record on Review and the Admission of Service thereof.

Said transcript to be prepared as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

On September 28, 1948, the United States Circuit Court of Appeals for the Ninth Circuit entered an Order which sets forth in detail the manner in which the original Exhibits set forth below are to be transmitted to the Clerk of the aforesaid Circuit Court:

Petitioners'—Nos. 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 21;

Respondent's—G, H, I, J, K, and L;

Joint Exhibits of Petitioners and Respondent—2-A, 3-B, 17-C, 18-D, 19-E, and 20-F.

/s/ GEORGE H. STONE,
Counsel for Petitioners.

/s/ WM. D. MORRISON,
Counsel for Petitioners.

(Acknowledgment of Service.)

[Endorsed]: T.C.U.S. Filed Oct. 11, 1948. [195]

[Title of Causes Nos. 12515-16.]

CERTIFICATE

I, Victor S. Mersch, clerk of The Tax Court of the United States, do hereby certify that the foregoing pages, 1 to 195, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 22nd day of October, 1948.

(Seal) /s/ VICTOR S. MERSCH,
Clerk, The Tax Court of the United States.

[Endorsed]: No. 12078. United States Court of Appeals for the Ninth Circuit. Walter Trepte and Margaret Trepte, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of The Tax Court of the United States.

Filed October 28, 1948.

 /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals for the
Ninth Circuit

No. 12078

WALTER TREPTE, MARGARET TREPTE,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STATEMENT OF POINTS ON WHICH PETI-
TIONERS INTEND TO RELY AND DESIG-
NATION OF PARTS OF THE RECORD
NECESSARY FOR CONSIDERATION

To the Honorable Paul P. O'Brien, Clerk of the
United States Circuit Court of Appeals for the
Ninth Circuit:

Petitioners adopt as their points on appeal the
assignments of error included in the petition for
review within the transcript of record.

The petitioners designate for printing, the entire
transcript of the record, except Exhibits attached
to the petition of Walter Treppe, Tax Court Docket
No. 12515 designated as Exhibits A, B, C and D
and the Exhibits attached to the petition of Mar-
garet Treppe, Tax Court Docket No. 12516 desig-
nated as Exhibits A, B, C and D for the reason
these exhibits are included in the order dated Sep-

tember 28, 1948 issued by this Honorable Court and are designated therein as Petitioners Exhibits 1, 4 and 5 and Joint Exhibits 2-A and 3-B.

Dated November 3, 1948.

/s/ GEORGE H. STONE,
Counsel for Petitioners.

/s/ WM. D. MORRISON,
Counsel for Petitioners.

[Endorsed]: Filed November 4, 1948. Paul P. O'Brien, Clerk.